



Issue Date: 17 May 2019

Case No.: 2018-LCA-00022

In the Matter of:

NAVEEN VUDHAMARI
Prosecuting Party

v.

ADVENT GLOBAL SOLUTIONS
Respondent

DECISION AND ORDER GRANTING SUMMARY DECISION

1. Nature of Motion. This proceeding arises under the H-1B nonimmigrant worker program of the Immigration and Nationality Act (INA). 8 U.S.C. §§ 1101-1537; 29 C.F.R. Part 655, Subparts H and I. Pursuant to 29 C.F.R. § 18.70(c), Respondent filed a Motion to Dismiss the above-captioned claim on the grounds the Prosecuting Party failed to state a claim upon which relief can be granted because Respondent has paid all wages due pursuant to the Labor Condition Application (LCA).¹ In response, the Prosecuting Party, proceeding pro se, opposes the motion and generally argues he is entitled to additional wages and other damages.²

2. Procedural History and Findings of Fact.

a) In August 2015, Respondent filed a LCA Employment and Training Administration (ETA) Form 9035 & 9035E with the Department of Labor (DOL) seeking to hire an H-1B nonimmigrant worker to work as a “Systems Analyst” with the Standard Occupational Code (SOC) occupational title “Computer Systems Analyst.” Respondent sought to hire one full-time worker from August 5, 2015 to August 5, 2018. Respondent designated the application as a “Change in Employer.” Respondent designated the wage rate of \$60,500 per year based on the Level 1 Wage as specified by the Foreign Labor Certification Data Center Online Wage Library. The DOL certified Respondent’s LCA application for the dates ranging from August 5, 2015 to August 5, 2018.³ (AX-2, EX-1, pp. 1-5)

¹ Respondent’s Motion to Dismiss is marked Appellate Exhibit (AX) 1. Although Respondent’s filing is styled as a Motion to Dismiss, after considering it in its entirety, the undersigned concluded that Respondent’s intent was to file a combined motion to dismiss and an alternative motion for summary decision pursuant to § 18.72. This ruling and order addresses both such motions.

² The Prosecuting Party’s reply to Respondent’s Motion to Dismiss is marked AX-2.

³ Although it is unclear from the face of the LCA application, Respondent stated the Department of Labor certified the LCA application on August 3, 2015. (AX-2, p. 2)

b) On an undated Form WH-4 (Nonimmigrant Worker Information Form), United States DOL, Wage and Hour Division (WHD), Mr. Naveen Vudhamari, an H-1B nonimmigrant worker, indicated he began working for Respondent on August 10, 2015. Mr. Vudhamari alleged Respondent failed to do the following: 1) pay him the higher of the prevailing wage or actual wage; 2) pay him for time off due to a decision by Respondent or for time needed by him to acquire a license or permit; 3) pay him fringe benefits equivalent to those provided to U.S. workers; 4) provide employees with notice of its intent to hire nonimmigrant workers or provide him with a copy of the LCA; and 5) maintain and make available for public examination the LCA and necessary documents at the principal place of business or worksite.

c) On June 19, 2018, the Administrator, United States DOL, WHD, after an investigation, concluded Respondent committed three LCA violations. The Administrator's determination letter provided the investigation was limited in scope to one H-1B nonimmigrant worker.

First, the Administrator concluded Respondent failed to pay the required wage rate for productive work in violation of 20 C.F.R. § 655.731. As a result of this violation, the Administrator ordered Respondent to pay \$2,463.97 in back wages to one H-1B nonimmigrant worker. The Administrator's calculations regarding the assessed unpaid wages and underlying documentation are not a part of the record. However, on April 7, 2017, the ETA, Office Foreign Labor Certification (OFLC), issued a letter modifying the assigned wage level from Wage Level 1 to Level 3 pursuant to a review conducted by the National Prevailing Wage Center (NPWC) at the request of WHD during the course of the Administrator's investigation. According to the NPWC, and as reported by the OFLC, the prevailing wage for Computer Systems Analyst, Wage Level 3, from July 2015 to June 2016 was \$108,493 per year in Santa Clara County and \$90,792 per year in Alameda County.⁴

Second, the Administrator found Respondent substantially failed to provide notice of the filing of the LCA in violation on 20 C.F.R. § 655.734. The Administrator assessed a civil money penalty (CMP) in the amount of \$16,625.00 for this violation.

Finally, the Administrator determined Respondent failed to accurately specify the wage rate and conditions under which the H-1B nonimmigrant worker would be employed in violation of 20 C.F.R. § 655.730 and § 655.731. The Administrator did not assess a CMP for this violation.

d) By letter dated June 27, 2018 and filed on June 29, 2018, Mr. Vudhamari appealed the Administrator's determinations and filed a request for hearing with the Office of Administrative Law Judges (OALJ). Specifically, Mr. Vudhamari contended the \$2,463.97 in back wages owed to him, as calculated by the Administrator, was an "inaccurate amount." Further, Mr. Vudhamari alleged the Administrator impermissibly did not award him any additional "wages" based on the finding Respondent failed to accurately specify the wage rate and conditions under which the H-1B nonimmigrant worker would be employed. Additionally, Mr. Vudhamari alleged Respondent's "misrepresentation of information on LCA caused the denial of [his] H-1B

⁴ The OFLC mistakenly stated the prevailing wage rate in Alameda County was "\$90,7924 per year." (AX-1, EX-3, p. 2)

petition” and Respondent provided “fraudulent information” regarding his LCA application to the U.S. Citizenship and Immigration Services (USCIS). Respondent did not appeal the Administrator’s determination.

e) On July 19, 2018, the undersigned issued a Notice of Hearing and scheduled this claim for hearing. This matter was most recently scheduled for hearing on June 11, 2019 in Dallas, Texas, but the undersigned granted a continuance to allow the parties additional time to complete discovery.

f) On October 25, 2018, the undersigned issued a Decision and Order Approving Consent

Findings between the Administrator and Respondent. As part of this agreement, Respondent agreed to pay the \$16,625.00 CMP assessed by the Administrator. Because Mr. Vudhamari filed an objection to the amount of back wages the Administrator assessed was owed to him, the Administrator did not pursue back wages on Complainant’s behalf as part of the Consent Findings.⁵

g) On January 3, 2019, the Prosecuting Party filed a Formal Complaint with the undersigned in which he alleged the following: 1) Respondent inappropriately paid him wages based on a Wage Level 1 classification for his position, rather than a Wage Level 4 classification; 2) Respondent did not properly terminate the Prosecuting Party; 3) Respondent requested to pay visa fees to a bank account in India; 4) Respondent denied the Prosecuting Party health insurance; 5) Respondent threatened the Prosecuting Party; 6) Respondent discriminated against the Prosecuting Party based on his nationality; 7) Respondent did not pay for the Prosecuting Party’s return airfare; 8) Respondent did not share a copy of the LCA with the Prosecuting Party; 9) Respondent submitted fraudulent documents to the USCIS and Department of Labor; 10) Respondent acted in bad faith; 11) Respondent willfully submitted false documents to USCIS so he and his family would lose legal status in the United States; 12) Respondent abused labor and employment laws to make money; 13) Respondent placed the Prosecuting Party “on bench without paying wages”; and 14) Respondent ran a “fake” company in California. As a result of these allegations, the Prosecuting Party seeks an award requiring Respondent to pay the prevailing wages owed to him, damages for “exercising discrimination” and “destroying my American Dream, for depriving my family of their American Dream,” interest, and other “lawful compensation.”

In addition to the relief requested, the Prosecuting Party also desired to make a “formal complaint” against WHD based on its alleged failure to “process the complaint” and “willful[] delay of the investigation to cause further damage knowing the information related to my status in the USA.” The Prosecuting Party further alleged WHD “has been biased towards” Respondent. Finally, the Prosecuting Party desired to make a formal complaint against USCIS on the grounds an unnamed embassy employee gave him a pamphlet with a nonfunctioning

⁵ Up to this point in the proceedings, the Administrator, Wage and Hour Division, and Mr. Vudhamari were designated as the Prosecuting Parties in this matter. However, after the undersigned’s approval of the Consent Findings, because the Administrator was no longer a party to the case and would have no further involvement in these proceedings, Mr. Vudhamari became the sole Prosecuting Party.

telephone number for a hotline to call for assistance and USCIS failed to communicate with him about his H-1B transfer application.

h) On January 25, 2019, Respondent filed a Response to Formal Complaint with the undersigned. In its reply, Respondent explained that after filing the LCA in August 2015, USCIS denied its Change of Employer Petition on the grounds the Prosecuting Party failed to maintain his H-1B nonimmigrant status. In October 2015,⁶ Respondent filed a request to reopen the denied petition with USCIS and refiled the Prosecuting Party's H-1B petition in November 2015. In December 2015, USCIS denied the petition. For a third time, in January 2016, Respondent refiled the H-1B petition with USCIS with the same LCA. On April 7, 2016, USCIS denied the petition and considered the Prosecuting Party's H-1B legal status revoked as of September 30, 2015. According to Respondent, as of September 30, 2015, the Prosecuting Party was no longer in lawful status and therefore he had to depart the United States. Given these facts, Respondent contends it "was not under obligation to terminate Mr. Vudhamari, as there has never been an H-1B petition approved for him." The denial letters from USCIS are not a part of the record.

i) On March 15, 2019, Respondent filed a Motion to Dismiss on the grounds the Prosecuting Party had failed to state a claim upon which relief could be granted. (AX-1) On March 19, 2019, the undersigned issued an Order Establishing Deadline for Prosecuting Party to File Reply to Respondent's Motion to Dismiss. This Order required the Prosecuting Party to file a response with the undersigned no later than April 8, 2019. On April 5, 2019, the Prosecuting Party timely filed a reply to Respondent's motion with 11 supporting exhibits and attachments. (AX-2)

3. Applicable Law and Analysis.

a) *LCA Regulatory Framework.* The INA permits employers in the United States to hire nonimmigrant alien workers in specialty occupations. 8 U.S.C. § 1101(a)(15)(H)(i)(b). These workers commonly are referred to as H-1B nonimmigrants. Specialty occupations require specialized knowledge and a degree in the specialty. 8 U.S.C. § 1184(i)(1). To employ H-1B nonimmigrants, the employer must fill out a Labor Condition Application (LCA). 8 U.S.C. § 1182(n). The LCA stipulates the wage levels that the employer guarantees for the H-1B nonimmigrants. 8 U.S.C. § 1182(n)(1); 20 C.F.R. §§ 655.731, 655.732. After securing DOL certification for the LCA, the employer petitions for and the nonimmigrants receive H-1B visas from the State Department after Immigration and Naturalization Service (INS)⁷ approval. 20 C.F.R. § 655.705(a), (b).

b) *Motions to Dismiss.* "A party may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness." 29 C.F.R. § 18.70(c).

Respondent argues this claim should be dismissed because the Prosecuting Party has failed to state a claim upon which relief can be granted. (AX-1, p. 1) In his Formal Complaint,

⁶ In its motion, Respondent inaccurately noted USCIS took this action in October 2018.

⁷ The INS is now the "U.S. Citizenship and Immigration Services" or "USCIS." See Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, 2194-96 (Nov. 25, 2002).

the Prosecuting Party asserted Respondent failed to pay or underpaid him wages for time worked. Pursuant to the applicable regulations, an employer is obligated to pay its H-1B employees the required wage rate for the entire period of authorized employment. 20 C.F.R. § 655.731(a). The required wage rate must be paid "cash in hand, free and clear, when due." 20 C.F.R. § 655.731(c). Consequently, because the Prosecuting Party has alleged Respondent did not pay him wages or underpaid his wages, the Prosecuting Party has stated a claim upon which relief could be granted. The fact that the Prosecuting Party has stated a claim upon which relief can be granted is supported by conclusions of the Administrator's investigation which found Respondent failed to pay the required wages to the Prosecuting Party. Moreover, Respondent conceded it "has been and is willing to pay the back wages owed to Mr. Vudhamari which was determined by the Department of Labor after a thorough investigation." (AX-1, p. 3)

Rather, the Prosecuting Party and Respondent dispute the amount of unpaid or underpaid wages allegedly owed to the Prosecuting Party. Because there are disputed material facts, the undersigned interprets and construes Respondent's Motion to Dismiss as a Motion for Summary Decision.

c) *Motions 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).

Once the moving party has demonstrated an absence of evidence supporting the non-moving party's position, the burden shifts to the non-moving party to establish the existence of an issue of fact that could affect the outcome of the litigation. *Seetharaman v. Gen. Elec. Co.*, ARB No. 03-029, ALJ No. 2002-CAA-021, slip op. at 4 (ARB May 28, 2004). At this stage of summary decision, the non-moving party may not rest upon mere allegations, speculation, or denials of the moving party's pleadings, but must set forth specific facts on each issue upon which he would bear the ultimate burden of proof. *Id.* citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *see also* FED. R. CIV. P. 56(e).

d) *Required Wage Rate.* On the LCA, an employer must attest that it will pay the H-1B workers whom it seeks to hire a wage that is the greater of: (1) "the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question"; or (2) "the prevailing wage level for the occupational classification in the area of employment." 8 U.S.C. § 1182(n)(1)(A)(i); 20 C.F.R. § 655.731(a). The enforceable wage obligation is the "actual wage" or the "prevailing wage," whichever is greater. 20 C.F.R. § 655.731(a). "Actual wage" is the wage the employer pays to "all other individuals with similar experience and qualifications for the specific employment in question," but "[w]here no such other employees exist at the place of employment, the actual wage shall be the wage paid to the H-1B nonimmigrant." 20 C.F.R. § 655.731(a)(1); *see Jain v. Empower IT, Inc.*, ARB No. 08-077, ALJ No. 2008-LCA-8, slip op. at 10-11 (ARB Oct. 30, 2009). The employer shall determine the prevailing wage for the occupation classification in the area of intended employment at the time it files the LCA. 20 C.F.R. § 655.731(a)(2). It must base the prevailing wage on the best information available as of the time of filing the application, and may utilize a wage obtained

from an OFLC NPC (OES), an independent authoritative source, or other legitimate sources of wage data. 20 C.F.R. § 655.731(a)(2).

The Prosecuting Party argues Respondent failed to pay him the correct wage. Respondent concedes in its Response to Formal Complaint and in its Motion to Dismiss that, pursuant to the certified LCA, it paid the Prosecuting Party a salary of \$60,500.00 per year based on a Level I Wage classification for his position, Computer Systems Analyst. During the Administrator's investigation, the ETA modified the assigned wage level from Wage Level 1 to Level 3.⁸ Based on the modified wage levels for the Prosecuting Party's position, the Administrator concluded that Respondent failed to pay the required wage rate and thus underpaid the Prosecuting Party \$2,463.97 in wages. The Administrator's calculations and underlying documentation to support those calculations are not a part of the record. Respondent unequivocally declared in its motion that, "at all given times, [Respondent] has been and is willing to pay the back wages owed to Mr. Vudhamari which was determined by the Department of Labor after a thorough investigation." (AX-1, p. 3) Thus, the undersigned interprets Respondent's declaration as a stipulation of fact it failed to pay the required wage rate and underpaid and owes \$2,463.97 in unpaid wages to the Prosecuting Party in violation of 20 C.F.R. § 655.731.

Although the Prosecuting Party contends the Administrator incorrectly calculated the wages owed to him by Respondent, the Prosecuting Party has not offered any specific arguments, calculations, or evidence in support of this assertion. The Prosecuting Party's reply to the motion is vague, unclear, and fails to articulate any legal or factual bases for the relief he seeks. In particular, the Prosecuting Party has not made a specific or sufficient argument regarding the amount of wages he believes he was not paid or was underpaid. Specifically, neither the Prosecuting Party's formal complaint nor his motion response contains a detailed identification of the specific required wage to which he believes he was legally entitled. Likewise, neither filing contains a detailed computation and supporting evidence that demonstrates a genuine dispute of fact as to how Respondent violated the Act in a manner different from the Administrator's investigation and conclusion. Similarly, the exhibits submitted as attachments to the Prosecuting Party's reply to Respondent's motion do not assist him in establishing Respondent did not pay or underpaid him the applicable required wages during his employment with Respondent.

The only reasonably conceivable argument the undersigned can discern from the Prosecuting Party's reply is that he believes the prevailing wage should have been calculated based on a Wage Level 4 classification, rather than a Wage Level 3 classification as determined by the ETA. (AX-2, p. 2; AX-2, PX-4 and PX-6) Although it would be beneficial for the Prosecuting Party to select the highest wage level for his position, an H-1B nonimmigrant worker has no authority to unilaterally select the wage level for a given job or position. To the contrary, the prevailing wage is determined by one of three sources: a prevailing wage determination issued by ETA's National Prevailing Wage Center (NPWC); an independent

⁸ When conducting an LCA enforcement investigation, the Wage and Hour Division "may" go to ETA for a prevailing wage determination, but it has the discretion whether or not to go to ETA or to determine the applicable prevailing wage itself. See *Administrator v. Advanced Professional Marketing, Inc.*, ARB No. 12-069, ALJ No. 2008-LCA-17 (June 3, 2014).

authoritative source; or “[a]nother legitimate source of wage information.” 20 C.F.R. § 655.731(a)(2)(ii).

In this matter, during the Administrator’s investigation, the ETA modified the Prosecuting Party’s wage level from Wage Level 1 to Wage Level 3 during the Prosecuting Party’s period of employment with Respondent. Based on this wage modification, the Administrator concluded Respondent owed the Prosecuting Party \$2,463.97 based on Respondent’s failure to pay the required wage rate. The Prosecuting Party has not set forth any evidence contrary to the Administrator’s findings and conclusions. Due to the Prosecuting Party’s failure to establish the existence of an issue, fact, or other evidence that could affect the outcome of this case, there is no genuine dispute of material fact regarding the required wage rate resulting in the non-payment or underpayment of wages to the Prosecuting Party. Consequently, the Prosecuting Party has failed to establish that he is entitled to more than \$2,463.97 in unpaid wages as determined by the Administrator.

Although the undersigned is not required to give deference to the Administrator’s determination in H-1B cases, under 20 C.F.R. § 655.840(b), an administrative law judge “may affirm, deny, reverse, or modify in whole or in part” the Administrator’s decision. *Limanseto v. Ganze & Co.*, ARB No. 11-068, ALJ No. 2011-LCA-5 (ARB June 6, 2013). For the reasons explained above, and primarily due to the Prosecuting Party’s failure to establish the existence of facts and evidence to contradict the Administrator’s determination, the undersigned affirms the Administrator’s conclusion that Respondent owes \$2,463.97 in back wages to the Prosecuting Party.

e) *Other Benefits of Employment.* Benefits and eligibility for benefits provided as compensation for services (e.g., cash bonuses; stock options; paid vacations and holidays; health, life, disability and other insurance plans; retirement and savings plans) shall be offered to the H-1B worker(s) on the same basis, and in accordance with the same criteria, as the employer offers to U.S. workers. 20 C.F.R. § 655.731(c)(3).

In his Formal Complaint and reply to Respondent’s motion, the Prosecuting Party suggests Respondent did not offer him health insurance. In his Formal Complaint, the Prosecuting Party asserts Respondent denied his request for health insurance and told him to “go back to India for baby delivery.” In response to Respondent’s motion, the Prosecuting Party contends he requested to enroll in Respondent’s health insurance after the birth of his child. According to the Prosecuting Party, Respondent informed him “the company is still working on your visa,” “you could have gone back to India for baby delivery,” and “you still need your salary.”

However, the Prosecuting Party did not offer any evidence in support of his contention that Respondent did not offer him health insurance on the same basis and criteria as it offered U.S. workers during his period of employment. To the contrary, the Prosecuting Party’s position is based upon mere allegations and speculation. Consequently, the Prosecuting Party has failed to carry his burden to establish that he was not offered health insurance on the same basis as it was offered to U.S. workers.

f) *Public Access of LCA.* The employer shall make available for public examination, within one working day after the date on which an application under this paragraph is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary). 8 U.S.C. § 1182 (n)(1); *see also* 20 C.F.R. § 655.705(c)(2) ("The employer shall maintain the original signed and certified LCA in its files, and shall make a copy of the LCA, as well as necessary supporting documentation (as identified under this subpart), available for public examination in a public access file at the employer's principal place of business in the U.S. or at the place of employment within one working day after the date on which the LCA is filed with ETA.").

In his complaint, the Prosecuting Party alleges Respondent "did not share a copy of the LCA with me." Although it is unclear, the undersigned interprets this assertion by the Prosecuting Party that Respondent did not make the LCA publically available to him or other members of the public. During the investigation, the Administrator did not find that Respondent violated this provision. Moreover, there is no evidence in the record to suggest that Respondent violated this provision. However, even if Respondent had violated this provision, the Prosecuting Party would not be entitled to any relief or monetary damages on these grounds. Rather, a willful violation of this provision would give rise to a civil money penalty pursuant payable to the DOL pursuant to 8 U.S.C. 1182(n)(2)(C).

g) *Prohibition Against Retaliation.* The INA prohibits an employer who has filed an LCA from intimidating, threatening, restraining, coercing, blacklisting, discharging, or in any other manner discriminating against an employee because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of the H-1B program. 8 U.S.C.A. § 1182(n)(2)(C)(iv); *see also* 20 C.F.R. §§ 655.801, 655.810(b), (b)(2).

In the Prosecuting Party's Formal Complaint and motion response, he alleges Respondent discriminated against him based on his nationality. However, there is no evidence in the record to suggest Respondent intimidated, threatened, restrained, coerced, blacklisted, discharged, or discriminated against him in any other manner for disclosing any information to his employer or another person that he reasonably believed Respondent was committing a violation of the H-1B program. For this reason, there is insufficient evidence to support a finding that Respondent unlawfully retaliated against the Prosecuting Party. To the extent the Prosecuting Party is asserting a separate and distinct type of employed-related discrimination based on his national origin, WHD and OALJ are improper forums to bring such claims.⁹

h) *Cost of Return Transportation.* In "certain circumstances," the H-1B petitioner must pay for the H-1B worker's return trip to his home country. The Immigration Act of 1990 included a requirement that if an H-1B worker "is dismissed from employment by the employer before the end of the period of authorized admission, [then] the employer shall be liable for the reasonable costs of return transportation of the alien abroad." "If the beneficiary voluntarily

⁹ Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), enforced by the Equal Employment Opportunity Commission (EEOC), prohibits national origin discrimination by employers with 15 or more employees.

terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been dismissed.” 8 C.F.R. § 214.2(h)(4)(iii)(E); 20 C.F.R. § 655.731(c)(7)(ii).

The Prosecuting Party alleges Respondent “has not paid [him] return airfare” and “return transportation monies.” (AX-2, p. 2) As set forth in Respondent’s motion, Respondent filed an H-1B Change in Employer Petition on three occasions with USCIS on the Prosecuting Party’s behalf and USCIS denied each petition. (AX-1, pp. 1-2) Although the USCIS’s denials are not a part of the record, and as a result the undersigned is unable to ascertain the exact date on which the Prosecuting Party’s authorized admission to the United States ceased, the Prosecuting Party concedes that USCIS denied his H-1B petition and he ultimately departed the United States sometime in March 2017. (AX-2, p. 2) Thus, Respondent did not dismiss the Prosecuting Party from employment before the end of the Prosecuting Party’s authorized admission. Consequently, Respondent is not required to pay the Prosecuting Party costs for return transportation.

i) *Punitive and Other Damages.* Although some whistleblower protection statutes administered by the DOL explicitly authorize punitive damages, the H-1B visa whistleblower protection statute and regulations do not. Punitive damages are not authorized in LCA cases. *Huang v. Administrative Review Board, USDOL*, No. 12-cv-35 (S.D. TX. Aug. 8, 2013) (case below ARB No. 09-044, 09-056, ALJ No. 2008-LCA-11); *see also Batyrbekov v. Barclay’s Capital*, ARB No. 13-013, ALJ No. 2011-LCA-025 (ARB July 16, 2014) (LCA statute and regulations do not provide damages for emotional distress based on wrongful discharge.)

In his complaint, the Prosecuting Party seeks an award of damages against Respondent to “pay monies to me for destroying my American Dream, for depriving my family of their American Dream.” Because punitive damages and other damages for emotional distress are not authorized, even if there were evidence to support such an award, the Prosecuting Party would not be entitled to such damages. Consequently, the Prosecuting Party is not entitled to any punitive damages or damages for emotional distress.

j) *Complaints Against WHD and USCIS.* In his complaint, the Prosecuting Party desired to make a “formal complaint” against WHD for failing to timely process his complaint and “willful delay” of initiating an investigation. In addition, the Prosecuting Party desired to make a “formal complaint” against USCIS for providing him with an incorrect telephone number and failing to communicate with him about his H-1B transfer application. Because the applicable law and regulations do not afford the undersigned legal authority to order any type of relief based on these assertions, the undersigned need not further address this issue raised by the Prosecuting Party.

k) *Interest.* The INA does not specifically provide for the award of pre-judgment interest or post-judgment interest on back pay by statute or regulation. However, the Administrative Review Board (ARB) has routinely awarded pre- and post-judgment interest on awards in H-1B cases, just as it does in cases arising under other remedial Department of Labor employee protection statutes. Based on ARB precedent and the remedial policies underlying the H-1B statutes and regulations, the H-1B worker in this case is entitled to pre-judgment and post-judgment compound interest on the pay award until the employer satisfies the debt. *Administrator, Wage and Hour Div. v. Greater Missouri Medical Pro-Care Providers, Inc.*, ARB No. 12-015, slip op. at 24-25, ALJ No. 2008-LCA-26 (ARB Jan. 29, 2014) (citations omitted).

The pre- and post-judgment interest shall be calculated according to the procedures set out in *Doyle v. Hydro Nuclear Servs. Id.* (citations omitted).

The undersigned previously found that the Administrator accurately concluded that Respondent owed \$2,463.97 in back wages to the Prosecuting Party. As previously noted, the Administrator's calculations regarding the back wages owed to the Prosecuting Party are not a part of the record; thus, undersigned is unable to determine whether interest was factored into those calculations. Consequently, the Administrator, WHD, U.S. Department of Labor, shall make such calculations with respect to back pay and interest necessary to carry out this order. See *Ahad v. Southern Illinois University School of Medicine*, ARB Nos. 16-064, -065, ALJ No. 2015-LCA-23 (ARB Jan. 29, 2018) (ARB affirming the ALJ's directive that the Administrator, Wage and Hour Division, "shall make such calculations with respect to back pay and interest necessary to carry out this order.").

4. Order. Respondent's Motion to Dismiss and for Summary Decision is granted in part and denied in part.

a) The portion of the motion seeking to dismiss this case for failure to state a claim upon which relief could be granted is denied.

b) The portion of the motion seeking summary decision is granted.

c) Respondent shall make payment to the Prosecuting Party, Mr. Naveen Vudhamari, in the amount of \$2,463.97 based on Respondent's failure to pay the required wage rate as calculated by the Administrator, Wage and Hour Division.

d) Respondent shall pay the Prosecuting Party, Mr. Naveen Vudhamari, interest until the date of this Decision and Order on the back pay wages due at the applicable rate of interest as specified in 26 U.S.C. § 6621. The Administrator, Wage and Hour Division, shall make such calculations with respect to back pay and interest necessary to carry out this Decision and Order.

e) All other remaining claims asserted by the Prosecuting Party in this matter are denied and dismissed with prejudice.

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.