



**Issue Date: 01 March 2019**

Case No.: 2019-LCA-00004

In the Matter of

**ANUJ KAPOOR**

Prosecuting Party

v.

**INFOSYS LIMITED**

Respondent

**ORDER VACATING DECISION AND ORDER DISMISSING CASE, GRANTING  
PARTIES' JOINT MOTION FOR ENTRY OF CONSENT AGREEMENT AND  
APPROVING CONSENT FINDINGS**

The above-captioned matter involves an action brought before the Office of Administrative Law Judges ("OALJ") under the Immigration and Nationality Act ("INA"), 8 U.S.C. §1188, as amended in the Immigration Reform and Control Act of 1986, 8 U.S.C. §§1101(a)(15)(H)(i)(b), 1184(c), and 1186, and its implementing regulations at 29 C.F.R. Parts 655, subparts H and I.

On October 29, 2018, Anuj Kapoor ("Prosecuting Party") sent a facsimile transmission to the OALJ requesting a hearing in response to the Administrator's Determination issued by the Wage and Hour Division ("WHD") Arlington, TX district office on October 19, 2018 (WHD Reference No. 1851686). The Administrator's Determination was that, upon conclusion of an investigation under the H-1B provisions of the INA, as amended, Infosys Limited ("Respondent") was found not to have committed any violation, limited to Labor Condition Application ("LCA") I-200-16194-871242 and LCA I-200-15057-283456.

A Notice Of Hearing And Prehearing Order was issued on November 30, 2018, scheduling a hearing for February 8, 2019 and providing the parties with various prehearing directives. A teleconference with the parties was held on January 8, 2019 during which Respondent's request to reschedule the hearing for January 18, 2019 was granted. See Teleconference Summary And Order dated January 9, 2019.

By facsimile transmission received on January 15, 2019 and signed by counsel for Respondent and Prosecuting Party (who is self-represented in this matter), the parties indicate

that a settlement has been reached in this matter “pursuant to a mediation conference.”<sup>1</sup> The January 15, 2019 facsimile further states that “Prosecuting Party hereby withdraws his appeal” in this matter. The parties also requested that it be confirmed that they need not appear for the January 18, 2019 hearing.

The INA regulation at 20 C.F.R. § 655.825(a) provides that “[e]xcept as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the “Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges” established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.”

The INA regulations do not specifically address a request for withdrawal of a hearing request. Therefore, the regulation at 29 C.F.R. § 18.70(c) applies. That regulation states that “[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. If the opposing party fails to respond, the judge may consider the motion unopposed.”

To determine if it were appropriate to dismiss this proceeding before the OALJ with prejudice pursuant to a settlement agreement the parties have reached, the undersigned needed to review the terms of that settlement agreement. Therefore, an Order was issued on January 16, 2019, (1) postponing the hearing scheduled for January 18, 2019 and (2) directing the parties to submit documentation of the settlement agreement they reached by no later than February 22, 2019.<sup>2</sup>

By facsimile transmission received on February 15, 2019, Prosecuting Party submitted a copy of Settlement Agreement and Release (“Agreement”) signed by him and Respondent’s counsel and dated January 15, 2019, consisting of four pages. Paragraph 3 of the Agreement states that it resolves the suit Prosecuting Party filed in the District Court of Rhode Island “under the overtime and retaliation provisions of Rhode Island General Laws...and the Family Medical Leave Act,” as well as the allegations of INA violation presented in this case before the OALJ, specifically referencing case number “2019-LCA-00004” under which this case is docketed with the OALJ.

Based on finding the Agreement addressed and resolved the allegations presented in the instant matter, the undersigned issued a “Decision and Order Dismissing Case” on February 21, 2019, dismissing this matter before the OALJ with prejudice.

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<sup>1</sup> As was mentioned during the teleconference held in this matter, as well as in pleadings filed the parties, this mediation process occurred as part of separate case Prosecuting Party has pending in district court against Respondent.

<sup>2</sup> An addendum to that Order was issued on January 17, 2019, directing the parties to submit the documentation of their settlement agreement referenced in their January 15, 2019 facsimile transmission, or in the alternative, a proposed agreement containing consent findings and a dispositive order. The addendum, however, cited 29 C.F.R. Part 503 generally and specifically 29 C.F.R. § 503.49 in error: the regulatory provisions found at 29 C.F.R. Part 503 pertain to H-2A (not H-1B) temporary workers. Prosecuting Party alleged to be a temporary worker under the H-1B program.

On February 22, 2019, this Office received the Parties' Joint Motion for Entry of Consent Agreement ("Joint Motion") in this matter. The Joint Motion states, in part, that "[t]he [p]arties believe judicial approval of [the Agreement]...is not required because the statute and regulations which govern the H-1B application and hearing process, 20 C.F.R. §§ 655.825-840, do not mandate judicial approval when [parties] reach a settlement." Joint Motion at 2, ¶5. The Joint Motion further states that, instead, the undersigned may enter an order dismissing the case with prejudice upon the parties' request for a consent decree. Attached as Exhibit B to the Joint Motion is a proposed Consent Decree Order.<sup>3</sup> The Joint Motion requests that a consent order be issued in this matter, dismissing Prosecuting Party's claims with prejudice.

Under 29 C.F.R. § 18.90(c), after a decision and order is issued, the undersigned retains jurisdiction to dispose of appropriate motions, including a motion for reconsideration. The Joint Motion in this matter will therefore be deemed a timely motion for reconsideration of the "Decision and Order Dismissing Case" previously issued.<sup>4</sup>

Upon due consideration, the Joint Motion has merit. The INA's implementing regulations may be interpreted as to not require judicial approval of the Agreement; those regulations do not, however, preclude approval of the parties' consent findings.

The Joint Motion includes the following Consent Findings as outlined in its body as well as in the proposed Consent Decree Order attached to it as Exhibit B:

- a. Pursuant to the parties' settlement of Prosecuting Party's claims, this matter is dismissed with prejudice.
- b. This Order has the same force and effect as an order made after full hearing;
- c. The entire record on which this Order is made consists of the administrative determination and the Consent Decree (i.e., this Order);
- d. The parties waive any further procedural steps before this Court;
- e. The parties waive the right to challenge or contest the validity of the findings and order entered into.

As proposed, the parties' Consent Findings have been reviewed and determined to be fair and adequate, as well as not contrary to the public interest. Accordingly, the Joint Motion is **GRANTED**. The parties' Consent Findings as outlined in the Joint Motion and its Exhibit B are **APPROVED** and **INCORPORATED** into the record by reference above as letters a through e.

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<sup>3</sup> Attached as Exhibit A to the Joint Motion is a Declaration of Thomas Enright, an attorney who represented Prosecuting Party in his lawsuit against Respondent in U.S. District Court for the District of Rhode Island with a copy of the first amended complaint filed in that lawsuit included as its Exhibit 1. In his Declaration, Mr. Enright avers that, (1) over the course of a 2-day mediation held in that lawsuit, the parties agreed to resolve all of Prosecuting Party's claims including the allegations presented in this matter before the OALJ and (2) he was retained in only in the lawsuit in District Court.

<sup>4</sup> "A motion for reconsideration of a decision and order must be filed no later than 10 days after service of the decision on the moving party." 29 C.F.R. § 18.93.

The postponed hearing is canceled and the case is dismissed with prejudice.

**SO ORDERED.**

**LYSTRA A. HARRIS**  
Administrative Law Judge

Cherry Hill New Jersey