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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 06-8203 ABC (RZx) Date January 8, 2007

Title Global Horizons, Inc., et al. v. U.S. Department of Labor, et al.

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

ENTERED - WESTERN DIVISION CLERK, U.S. DISTRICT COURT
JAN 11 2007
CENTRAL DISTRICT OF CALIFORNIA BY [Signature] DEPUTY

Present: The Honorable
Audrey B. Collins

Daphne Alex Deputy Clerk	Not present Court Reporter / Recorder	N/A Tape No.
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Attorneys Present for Plaintiffs: None	Attorneys Present for Defendants: None
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Proceedings: ORDER Denying Plaintiffs' Ex Parte Application for Temporary and Preliminary Restraining Orders Staying the Effective Date of Administrative Action (In Chambers)

On January 4, 2007, Plaintiffs Global Horizons, Inc., Global Horizons Manpower, Inc. and Mordechai Orian (collectively, "Plaintiffs") filed an Ex Parte Application For Temporary And Preliminary Restraining Orders. Also on January 4, 2007, Defendants U.S. Department of Labor and Elaine L. Chao (collectively, "Defendants") filed an opposition to Plaintiff's application. The Court finds the matter appropriate for submission without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Upon consideration of the parties' submissions and the case file, the Court hereby DENIES Plaintiff's ex parte application.

To obtain a preliminary injunction, a plaintiff must show "either: (1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in its favor." Walczak v. EPL Prolong, Inc., 198 F.3d 725, 731 (9th Cir. 1999). "These two alternatives represent extremes of a single continuum, rather than two separate tests." Id. (internal quotations omitted). "Thus, the greater the relative hardship to [a plaintiff], the less probability of success must be shown." Id.; see also International Jensen, Inc. v. Metrosound U.S.A., Inc., 4 F.3d 819, 822 (9th Cir. 1993). To obtain a temporary restraining order ("TRO") pending a hearing on a request for a preliminary injunction, a plaintiff must show that "immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition." Fed. R. Civ. P. 65(b)

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SCANNED

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Here, the Court finds that Plaintiff has failed to demonstrate either a likelihood of success on the merits, or the existence of serious questions going to the merits.¹ Plaintiffs seek to reverse Administrative Law Judge William Dorsey's November 30, 2006 Decision and Order Dismissing Untimely Request for Hearing (the "November 30, 2006 Administrative Order"). Specifically, Plaintiffs assert that Administrative Judge Dorsey's decision was arbitrary and capricious, not in accordance with applicable law, and not supported by substantial evidence. Thus, Plaintiffs assert that the November 30, 2006 Administrative Order should be reversed pursuant to the Administrative Procedure Act, 5 U.S.C. §702, et seq. ("APA").

An agency decision is arbitrary or capricious where the agency fails to "articulate a satisfactory explanation for its action, including a 'rational connection between the facts found and the choice made.'" Gilbert v. National Transportation Safety Board, 80 F.3d 364, 368 (9th Cir. 1996) (quoting Sierra Pacific Indus. v. Lying, 866 F.2d 1099, 1105 (9th Cir. 1989)).

The November 30, 2006 Administrative Order clearly sets forth the basis for the decision to reject Plaintiffs' appeal. Administrative Judge Dorsey conducted an extensive analysis of the rationale behind requiring matters involving the H2-A visa program to be dealt with on an expedited basis, and discussed Plaintiffs' familiarity with the H2-A process at length. Specifically, the November 30, 2006 Administrative Order notes Plaintiffs' prior experience with the H2-A visa program, including facts which make it clear that Plaintiffs were in a position to know and understand the importance of handling H2-A visa program matters in an expedited manner. Further, the November 30, 2006 Administrative Order takes into account the fact that the July 27, 2006 Determination Notice (i.e., the notice regarding Plaintiffs' debarment) clearly stated that Plaintiffs must appeal "within seven calendar days of the date of this Determination Notice," and despite this, Plaintiffs failed to respond until eight days after the notice was delivered to Plaintiffs. (See Opposition, Ex. A, p. 13).

¹ 'Serious questions' means questions that cannot be resolved at the hearing on the injunction, and as to which the court perceives the status quo must be preserved. Republic of Philippines v. Marcos, 862 F.2d 1355, 1362 (9th Cir. 1988). Additionally, 'serious questions' must involve a "fair chance of success on the merits." Id. (quoting National Wildlife Fed'n v. Coston, 773 F.2d 1513, 1517 (9th Cir. 1985)).

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Further, Administrative Judge Dorsey analyzed several possible standards to apply to the determination of whether Plaintiffs should be allowed to file a late appeal. In conducting this analysis, Administrative Judge Dorsey examined the standards used in several analogous circumstances, and discussed the propriety of applying the various standards to the case at hand. This analysis is extremely thorough – comprising over ten pages of the November 30, 2006 Administrative Order. Following this analysis, Administrative Judge Dorsey determined that the proper standard to apply is “equitable tolling.” Upon applying the facts regarding Plaintiffs’ late request for appeal to the “equitable tolling” standard, Administrative Judge Dorsey determined that Plaintiffs’ late filed request to appeal must be denied.

Administrative Judge Dorsey’s November 30, 2006 Administrative Order is thorough, well reasoned, and based upon substantial evidence. The November 30, 2006 Administrative Order clearly articulates the applicable law as well as a satisfactory explanation for its action, and makes a rational connection between the facts found and the decision made. In short, Plaintiffs have provided no evidence to support their assertion that the November 30, 2006 Administrative Order should be reversed. As a result Plaintiffs have failed to demonstrate either a likelihood of success on the merits, or the existence of serious questions going to the merits.²

Accordingly, Plaintiff’s application for temporary and preliminary injunctive relief is DENIED.

IT IS SO ORDERED.

Initials of Preparer

D.A.

² Because Plaintiffs have failed to demonstrate either a likelihood of success on the merits, or the existence of serious questions going to the merits, it is unnecessary to address the possibility of irreparable injury or the relative hardships.