



In the Matter of

ADITYA CHETTYPALLY,

ARB CASE NO. 2017-0057

PROSECUTING PARTY,

ALJ CASE NO. 2017-LCA-00006

v.

DATE:

JAN 21 2020

PREMIER IT SOLUTIONS, INC.,

RESPONDENT.

Appearances:

For the Prosecuting Party:

Aditya Chettyally; *pro se*; Telangana, India

For the Respondent:

Emily Neumann, Esq.; *Reddy and Neumann, PC*; Houston, Texas

Before: James A. Haynes, Thomas H. Burrell, and Heather C. Leslie,
Administrative Appeals Judges.

FINAL DECISION AND ORDER

PER CURIAM. This case arises under the H-1B visa program provisions of the Immigration and Nationality Act, as amended (INA or Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b) (2014) and 8 U.S.C. § 1182(n) (2013), and implementing regulations at 20 C.F.R. Part 655, subparts H, I (2017). After holding a hearing, a Department of Labor Administrative Law Judge (the ALJ) found that the Respondent effected a *bona fide* termination of the employment relationship under 20 C.F.R. § 655.731(c)(7)(ii) and an end to its obligation to pay wages to Aditya Chettyally, the Prosecuting Party. The ALJ concluded that having paid the \$26,737.97 assessment of the Administrator, Wage and Hour Division (WHD) for back wages and travel reimbursements, the Respondent had no further financial obligation to the Prosecuting Party. Decision and Order (June 20, 2017) (D. & O.). The Prosecuting Party appealed to the Board. The Respondent filed in opposition to the appeal. We affirm the ALJ's decision.

BACKGROUND

The United States Citizenship and Immigration Services (USCIS) authorized the Respondent to employ the Prosecuting Party from October 1, 2015, to September 3, 2018. Respondent's Brief in Response to Opening Brief (Nov. 27, 2017) (hereinafter "Respondent's Brief"). The Prosecuting Party began working for the Respondent in October, and was in nonproductive status sometime in November 2015. Hearing Transcript at 22; D. & O. at 2; see Respondent's Brief at 1-2, 10, 13.¹

On March 23, 2016, the Prosecuting Party filed a complaint with WHD alleging the Respondent's failed to pay wages for productive and nonproductive time and to provide the Prosecuting Party with a copy of the Labor Condition Application (LCA). Letter from Curtis L. Poer, District Director, WHD, to Chief Administrative Law Judge (Feb. 7, 2017), attachment. Subsequent to an investigation, WHD found violations of the Act and regulations and assessed \$26,737.97 in back wages for productive and nonproductive time from November 1, 2015, to May 13, 2016, when the Prosecuting Party returned to India, and reimbursements of travel costs incurred. The Respondent paid WHD's assessment. Administrative Law Judge's Exhibit 2; D. & O. at 2. The Prosecuting Party objected to WHD's assessment and requested a hearing.

The ALJ held a telephonic hearing on May 16, 2017. The Prosecuting Party testified that he wanted a year's salary beyond the assessed sum he paid him by the Respondent. Hearing Transcript at 19. The ALJ found that the Respondent effected a *bona fide* termination of the employment relationship under the requirements of 20 C.F.R. § 655.731(c)(7)(ii) and an end to its obligation to pay wages as of the Prosecuting Party's May 13, 2016, return to India. The ALJ thereby rejected the Prosecuting Party's claim to additional wages and compensation. The Prosecuting Party appeals.

JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction to review the ALJ's decision. 20 C.F.R. § 655.845; see Secretary's Order 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13072 (Apr. 3, 2019).

DISCUSSION

¹ The Respondent refers to its decision not to continue employing the Prosecuting Party after his first assignment ended, that he last worked in November 2015, and that he stopped coming to work thereafter. Under 20 C.F.R. § 655.731, when an H-1B employee stops working for an employer, it is the employer's responsibility, not the employee's, to effect a *bona fide* termination of the employment relationship.

In signing and filing a Labor Condition Application with the Department of Labor, an employer attests that for the entire period of authorized employment it will pay the required wage to the H-1B nonimmigrant worker. 8 U.S.C. § 1182(n)(1)(A); 20 C.F.R. § 655.731(a). The Department of Labor's regulation at 20 C.F.R. § 655.731(c)(7)(ii) details circumstances where wages need not be paid, including when the H-1B nonimmigrant worker experiences a period of nonproductive status due to conditions unrelated to his employment, or "if there has been a *bona fide* termination of the employment relationship. [Department of Homeland Security][DHS] regulations require the employer to notify the DHS that the employment relationship has been terminated so that the petition is canceled (8 CFR 214.2(h)(11))^[2], and require the employer to provide the employee with payment for transportation home under certain circumstances (8 CFR 214.2(h)(4)(iii)(E))^[3]." 20 C.F.R. § 655.731(c)(7)(ii).

The ALJ considered this regulatory scheme under the ARB's decision in *Vinayagam v. Cronous Solutions, Inc.*, ARB No. 15-045, ALJ No. 2013-LCA-029 (ARB Feb. 14, 2017), citing *Amtel Group of Fla., Inc. v. Yongmahapakorn*, ARB No. 04-087, ALJ No. 2004-LCA-006, slip op. at 11 (ARB Sept. 29, 2006), to the effect that three requirements necessary to effectuate a bona fide termination under 20 C.F.R. § 655.731(c)(7)(ii). First, the employer must expressly terminate the employment relationship with the H-1B worker. Second, the employer must notify USCIS that the employment relationship has been terminated so that the agency's prior approval of employer's H-1B petition for the worker can be revoked. Third, the employer must provide payment to the employee for the employee's transportation

² Under 8 C.F.R. § 214.2(h)(11)(i)(A), the employer, who no longer employs the H-1B worker must "send a letter" to USCIS explaining the change to the "terms and conditions" of the H-1B nonimmigrant employee's employment.

³ 8 C.F.R. § 214.2(h)(4)(iii)(E) provides:

Liability for transportation costs. The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. If the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been dismissed. If the beneficiary believes that the employer has not complied with this provision, the beneficiary shall advise the Service Center which adjudicated the petition in writing. The complaint will be retained in the file relating to the petition. Within the context of this paragraph, the term 'abroad' refers to the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H-1B status.

home under certain circumstances including, such as in this case, when the employer dismisses the H-1B employee ahead of the end of the authorized period of employment.

As to employee notice, the ALJ found that the Respondent did not inform the Prosecuting Party of his discharge but did notify USCIS, which notification met the second requirement, and the Prosecuting Party then learned of the agency's ensuing revocation of his H-1B status from its website in April 2016, which met the first. Hearing Transcript at 14-15. Specifically, the ALJ found that the fact that the Respondent did not inform the Prosecuting Party that his employment was terminated did not "in itself" "warrant extending the salary award" beyond that awarded by WHD since the Prosecuting Party admitted receiving actual notice from USCIS. Hearing Transcript at 15; D. & O. at 5.

As to the third requirement, the ALJ found that the Respondent did not pay for the Prosecuting Party's return transportation to India before his May 13, 2016, trip but did reimburse these costs by paying the assessment which included them. D & O. at 2-6.⁴ The ALJ thus found that the Prosecuting Party had been fully compensated for his return trip. The ALJ noted, moreover, that WHD's assessment included an order of back wages through the Prosecuting Party's May 13, 2016, trip. D. & O. at 6. The ALJ thus found that the Respondent effected a *bona fide* termination of the employment relationship under 20 C.F.R. § 655.731(c)(7)(ii) and an end to his obligation to pay wages, and concluded that the Prosecuting Party was not entitled to further compensation.

On appeal, the Prosecuting Party urges the Administrative Review Board (ARB or Board) to award him an additional year's salary beyond WHD's \$26,737.97 assessment.⁵ Administrative Law Judge's Exhibit 2; D. & O. at 4. The Prosecuting Party makes several arguments why he is entitled to one more year's salary but none of these arguments are availing. The Prosecuting Party argues that the ALJ missed the fact that the Respondent forced him to leave the country, but USCIS had cancelled his H-1B status. The Prosecuting Party also asserts that the Respondent falsified his resume and forced him to work outside his role. But even if true, the employer's wage obligation remained the occupation listed in the LCA, *see* 20 C.F.R. § 655.731(c)(7). The Prosecuting Party also argues that the LCA was approved for 3

⁴ The Prosecuting Party admitted, "Transportation costs were given to me after my flight months later as reimbursement but not at the time of my flight in May 2016, they never asked me or offered return flight." Response to Post Hearing Brief (June 12, 2017).

⁵ WHD found other violations for which it did not assess civil money penalties, including failure to provide free health benefits from December 1, 2015, to May 13, 2016, and a copy of the Labor Condition Application (LCA). Administrative Law Judge's Exhibit 2; D. & O. at 4. To the extent that the Prosecuting Party asserts the existence of violations that WHD investigated and found to exist, we do not address the assertions.

years so he is entitled to one more year salary. But the approval does not provide a basis for additional wages. And lastly, that the Respondent did not effect a *bona fide* termination of the employment relationship where it failed to pay all wages, and had not provided proper notice or payment for transportation to India before the trip. But as set forth above, the ALJ rationally found no regulatory authority for awarding additional compensation where the Respondent had paid back wages for all productive and nonproductive time continuing through April 21, 2016, when the Prosecuting Party learned of his discharge, to May 13, 2016, when he left the United States and returned to India, and the Prosecuting Party had been fully reimbursed for his return transportation. Accordingly, the ALJ properly concluded that the Respondent has no further financial obligation to the Prosecuting Party. We affirm his decision as it is rational, supported by the record before us, and consistent with applicable law.

CONCLUSION

For the reasons provided above, we hold that the ALJ properly found that the Respondent effected a *bona fide* termination of the employment relationship and that the Respondent has no further financial obligation to the Prosecuting Party. Accordingly, we **AFFIRM** the ALJ's decision.

SO ORDERED.
