In the Matter of

JUAN JOSE ARNAIZ COT,

PROSECUTING PARTY,

v.

UNIVERSITY OF SOUTH CAROLINA,

RESPONDENT.

ARB CASE NO. 2019-0033

ALJ CASE NO. 2018-LCA-00030

DATE: November 25, 2019

Appearances:

For the Complainant:
Juan Jose Arnaiz Cot*, pro se,* Charleston, South Carolina

***For the Respondent*:**
M. Dawes Cooke, Jr., Esq., John W. Fletcher, Esq.; *Barnwell, Whaley, Patterson, and Helms, LLC*, Charleston, South Carolina

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), 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 and I (2016). The U.S. Department of Labor's Wage and Hour Division (Administrator) conducted an investigation of Respondent, the University

of South Carolina, and issued a Determination Letter in which it concluded that Respondent owed back wages to Complainant Juan Jose Arnaiz Cot, a researcher in one of its laboratories. Cot contacted the Office of Administrative Law Judges (OALJ) and requested a hearing because, despite the award of some back wages, he believes that the amount awarded "is incorrect and was based, at least in part, on the perjuries of multiple witnesses."[1] Cot also asked OALJ to "address at the hearing issues related to his Visa status and the misuse of government funds regarding his employment."[2]

OALJ assigned this case to an Administrative Law Judge (ALJ) who asked Cot to clarify his request for hearing, and on September 28, 2018, Cot submitted a document identifying twenty issues for hearing, none of which involved the back wage investigation conducted by the Administrator. The ALJ concluded that, because Cot was no longer seeking review of the findings in the Determination Letter, Cot should be treated as the prosecuting party in this case.[3] On January 14, 2019, Respondent filed a "Motion for Judgment on the Pleadings Under the Eleventh Amendment" (Motion), seeking dismissal of the case because the Eleventh Amendment to the U. S. Constitution grants Respondent immunity from suit. Cot did not file a response. On February 1, 2019, the ALJ granted the Motion in a "Decision and Order Dismissing Case and Cancelling Hearing" (D. & O.). The ALJ reached the following conclusions: (1) Respondent is an arm of the state of South Carolina, and is therefore entitled to sovereign immunity under the Eleventh Amendment; (2) sovereign immunity bars the Department of Labor from adjudicating complaints filed by a private party against a nonconsenting state; and (3) Cot has not shown that South Carolina has expressly waived its sovereign immunity or that Congress has abrogated it.[4]

The Board has jurisdiction to review the ALJ's D. & O.[5] The appeal before us arises from the issues raised by Cot's request for an ALJ hearing and not the

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1 D. & O. at 2.

2 *Id*.

3 *Id*. at 3 (citing 20 C.F.R. § 655.820(b)(1)).

4 D. & O. at 5-6.

5 8 U.S.C. § 1182(n)(2); 20 C.F.R. § 655.845; *see* Secretary's Order No. 01-2019 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13,072 (April 3, 2019).

violations identified in the Determination Letter issued by the Wage and Hour Division.

The ALJ's conclusion that Respondent is entitled to Eleventh Amendment immunity is correct.[6] We therefore adopt the ALJ's well-reasoned D. & O. as the final agency decision in this matter and attach a copy hereto.

SO ORDERED.

[6] On appeal Cot argues that Respondent waived sovereign immunity by signing certain federal forms and accepting federal funds. Brief in Support of Petition for Review at 7-14. But his argument focuses on waiver under statutes other than the INA. A state's receipt of federal funds does not automatically constitute a waiver of its Eleventh Amendment immunity. *See, e.g., Hurst v. Tex. Dept. of Assist. & Rehabilitative Svs*., 482 F.3d 809, 811 (5th Cir. 2007); *see also Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 247 (1985) ("Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute.").