



In the Matter of

ADMINISTRATOR,
WAGE & HOUR DIVISION

PROSECUTING PARTY,

v.

INTEGRATED GEOPHYSICS, CORP.,¹

RESPONDENT.

ARB CASE NO. 2019-0001

ALJ CASE NO. 2017-LCA-00018

DATE: May 13, 2020

Appearances:

For the Prosecuting Party, Administrator, Wage and Hour Division:

**Kate S. O'Scannlain, Esq., Jennifer S. Brand, Esq., Paul Frieden, Esq.,
Amelia Bell Bryson, Esq.; United States Department of Labor;
Washington, District of Columbia**

For the Respondent:

Peter D. Williamson, Esq.; Chamberlain Law; Houston, Texas

**BEFORE: Thomas H. Burrell, Acting Chief Administrative Appeals Judge;
Heather C. Leslie and James D. McGinley, Administrative Appeals Judges**

DECISION AND ORDER

PER CURIAM. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101-1537 (2014), and its implementing regulations at 20 C.F.R. Part 655, Subparts H and I (2019). Respondent, Integrated Geophysics, appealed to

¹ Respondent notes the correction from "incorporated" to "corporation" in its petition for review.

the Administrative Review Board (ARB or Board) from a Department of Labor Administrative Law Judge (ALJ) Decision and Order (D. & O.) issued on September 26, 2018. In his decision, the ALJ concluded that Respondent violated the H-1B program's required wage obligation when it failed to pay an H-1B nonimmigrant worker, Maria Hanciuc, the required wage rate while she worked for Respondent on an H-1B visa. We hold Respondent failed to pay Hanciuc the required wage rate for two Labor Condition Application (LCA) periods, and that neither of the regulatory exceptions to the required wage obligation applies. As a result, the Board summarily affirms the ALJ's D. & O.

JURISDICTION AND STANDARD OF REVIEW

This Board has jurisdiction to hear appeals concerning questions of law or fact from final decisions of ALJs in cases under the H-1B provisions of the Immigration and Nationality Act. *See* 20 C.F.R. §655.845; *see also* Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020). The Board has plenary authority to review an ALJ's legal conclusions de novo. *Limanseto v. Ganze & Co.*, ARB No. 2011-0068, ALJ No. 2011-LCA-00005, slip op. at 3 (ARB June 6, 2013).

DISCUSSION

An employer is required to pay its H-1B nonimmigrant employees the required wage, including for so-called "nonproductive time," for the entire duration of the H-1B visa, unless the employer can show that one of the two exceptions to the benching provision applies. 20 C.F.R. §655.731(b)(7)(ii).² Respondent failed to pay Hanciuc the required wage for certain periods during the duration of her two H-1B visas, and neither of the two exceptions applies.

Respondent does not argue that it paid Hanciuc the required wages under the LCAs it completed for her. Further, Respondent does not argue that either of the two exceptions to its preexisting regulatory requirement to pay wages applies.

Instead, Respondent repeats the arguments it made to the ALJ about fraud, equity, and Hanciuc's unclean hands,³ as well as the argument that awarding

² The two exceptions specified in this regulation are met when there has been a bona fide termination, or when "conditions unrelated to employment which take the nonimmigrant away from his/her duties at his/her voluntary request and convenience (e.g., touring the U.S., caring for ill relative) or render the nonimmigrant unable to work (e.g., maternity leave, automobile accident which temporarily incapacitates the nonimmigrant)."

³ *See Adm'r v. Efficiency3 Corp.*, ARB No. 2015-0005, ALJ No. 2014-LCA-00007, slip op. 9-12 (ARB Aug. 4, 2016) (in which the ARB rejected employer's argument that the employee's alleged wrongdoings relieved the employer of its obligations to pay the employee

Hanciuc damages in this matter treats the H-1B nonimmigrant worker more favorably than any of its other employees (U.S. workers), which is contrary to the intent of the act. But as the ALJ explained, none of these arguments speak to the law's two available exceptions. Again, as the ALJ stated, when Respondent's business began to fail,⁴ in order to avoid its obligation to pay LCA wages, it was required to discharge Hanciuc, notify the Department of Homeland Security, and possibly provide her payment for transportation home.⁵ 20 C.F.R. §655.731(c)(7)(ii).

The ALJ addressed all of Respondent's arguments and we affirm the ALJ's findings that Respondent failed to pay Hanciuc the required wage under both LCAs for the reasons he explained. Further, the amount of back wages that the ALJ ordered with respect to the LCAs was proper and is affirmed. 20 C.F.R. §655.810(a).

CONCLUSION

In sum, Respondent failed to pay Maria Hanciuc, an H-1B nonimmigrant employee, the required wage for two LCA periods until she resigned. Respondent thus owes Hanciuc \$68,738.84 in back pay.

SO ORDERED.

the wage listed in the LCA); *Varess v. Persian Broad. Serv. Glob., Inc.*, ARB No. 2018-0023, ALJ No. 2016-LCA-00019, slip op. at 6-7 (ARB Sept. 26, 2019) (in which the ARB explained that a complainant's "alleged misconduct does not affect [a] [r]espondent's duty to pay [the] [c]omplainant the wage set in the LCAs.").

⁴ See *Adm'r, Wage & Hour, Div. v. Gov't Training, LLC*, ARB No. 2016-0049, ALJ No. 2015-LCA-00005, slip op. at 6 (ARB Feb. 23, 2018) (in which the ARB rejected employer's argument that it should be excused from paying the wages owed under an LCA because of a downturn in business).

⁵ See *Adm'r, Wage & Hour, Div. v. Bedi*, ARB No. 2014-0096, ALJ No. 2012-LCA-00057, slip op. at 5 n.11 (ARB Feb. 29, 2016) ("If Respondents had wanted to end the requirement to pay wages because [Complainant] was not performing work under the LCA, then they should have effected a bona fide termination of her employment.").