

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

ASHUTOSH SHARMA,

ARB CASE NO. 2023-0017

PROSECUTING PARTY,

ALJ CASE NO. 2020-LCA-00006

v.

DATE: January 26, 2023

AMAZON WEB SERVICES, INC.,

RESPONDENT,

and

**ADMINISTRATOR, WAGE AND
HOUR DIVISION,**

PARTY-IN-INTEREST.

Before BURRELL and PUST, Administrative Appeal Judges

ORDER DISMISSING PETITION FOR INTERLOCUTORY REVIEW

PER CURIAM:

This case arises under the H-1B provisions of the Immigration and Nationality Act (INA or Act), as amended, and its implementing regulations.¹ Ashutosh Sharma (Prosecuting Party) filed a complaint against Amazon Web Services, Inc. (Respondent) alleging it committed violations of the H-1B provisions of the Act.

On January 9, 2023, a United States Department of Labor Administrative Law Judge (ALJ) issued a Ruling on Prosecuting Party's Motion for Reconsideration (Regarding Sixth Motion to Compel Further Responses to Discovery). The ALJ granted the Prosecuting Party's motion to compel further responses to discovery to one interrogatory and denied the motion to compel as to seven other interrogatories.

¹ 8 U.S.C. § 1101(a)(15)(H)(i)(b) and 8 U.S.C. § 1182(n). The statute's implementing regulations are found at 20 C.F.R. Part 655, subparts H and I (2022).

On January 10, 2023, the Prosecuting Party filed a Petition for Review with the Administrative Review Board (Board), seeking review of the ALJ's evidentiary rulings in this matter so far.²

On January 13, 2023, the ALJ issued a Procedural Order staying the proceedings upon the Board's consideration of the Prosecuting Party's Petition for Review.

The Secretary of Labor has delegated his authority to issue final administrative decisions in cases arising under the Act to the Board.³ Because the ALJ's January 9, 2023 order or any other evidentiary rulings do not constitute a final ruling as to the merits of Complainant's INA case, the Prosecuting Party's Petition for Review is interlocutory. The Board's delegated authority includes the consideration and disposition of interlocutory appeals, "in exceptional circumstances, provided such review is not prohibited by statute."⁴ Furthermore, "[t]he Secretary of Labor and the Board have repeatedly held that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals."⁵ The Prosecuting Party has failed to obtain the ALJ's certification or

² The Prosecuting Party argues that the Respondent has not been adequately responding during discovery and the ALJ has subsequently erred in his evidentiary rulings. The Petition for Review did not state any specific ALJ order for which the Prosecuting Party was seeking review but instead indicated he sought review of "the decisions and orders during the last 30 days" of the case. Attached to the Petition for Review are four of the ALJ's orders, issued on September 19, 2022 (Order Reopening Discovery for Limited Purposes and Resetting Deadline to File Dispositive Motions), November 22, 2022 (Ruling on Claimant Motion for Summary Decision), December 12, 2022 (Ruling on Prosecuting Party's Motion for Leave to File Reply Brief), and January 9, 2023 (Ruling on Prosecuting Party's Motion for Leave to File Reply Brief).

³ Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13,186 (Mar. 6, 2020).

⁴ *Id.* at § 5(b)(69).

⁵ *Manoharan v. HCL America, Inc.*, ARB No. 2021-0031, ALJ Nos. 2018-LCA-00029, 2021-LCA-00009, slip op. at 3 (ARB June 30, 2021) (citing *Kim v. SK Hynix Memory Sols.*, ARB No. 2020-0020, ALJ No. 2019-SOX-00012, slip op. at 3 (ARB Jan. 28, 2020)).


otherwise petitioned for or established grounds for an interlocutory appeal under the “collateral order” exception.⁶

Accordingly, we **DISMISS** the Prosecuting Party’s Petition for Interlocutory Review.

SO ORDERED.



TAMMY L. PUST
Administrative Appeals Judge



THOMAS H. BURRELL
Administrative Appeals Judge

⁶ “To fall within the ‘collateral order’ exception, the appealed order must ‘conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.’” *Id.* (citing *Petitt v. Delta Airlines*, ARB No. 2019-0087, ALJ No. 2018-AIR-00041, slip op. at 4 (ARB Aug. 26, 2020)) (quoting *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978)).