

U.S. Department of Labor

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



IN THE MATTER OF:

**ADMINISTRATOR, WAGE & HOUR
DIVISION, UNITED STATES
DEPARTMENT OF LABOR,**

ARB CASE NO. 2024-0042

**ALJ CASE NO. 2023-TAE-00011
CHIEF ALJ STEPHEN R. HENLEY**

PROSECUTING PARTY,

DATE: May 24, 2024

v.

**RIVET & SONS, LLC; and CLINTON
RIVET, INDIVIDUALLY,**

RESPONDENTS.

**Before HARTHILL, Chief Administrative Appeals Judge, and ROLFE,
Administrative Appeals Judge**

ORDER DISMISSING PETITION FOR REVIEW

HARTHILL, Chief Administrative Appeals Judge:

This proceeding arises under the provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act, (INA), 8 U.S.C. §§ 1101(a)(15)(H), 1184(c), 1188, and the implementing regulations at 20 C.F.R. Part 655 and 29 C.F.R. Part 501.

BACKGROUND

In April 2023, the Department of Labor's Wage and Hour Division (WHD) issued a determination letter to Rivets & Sons, LLC, Clinton S. Rivet, and Glynn J. Rivet (Respondents), alleging violations of the INA's H-2A non-immigrant worker program,¹ and assessing civil money penalties and a three-year debarment from

¹ The H-2A visa program permits employers to hire foreign workers to perform temporary agricultural work within the United States on a one-time occurrence, seasonal, peak load, or intermittent basis. *See* 29 C.F.R. §§ 501.1, 501.3.

applying for H-2A certifications with the Department of Labor.² Respondents filed objections to the determinations with WHD and requested a formal hearing.³ On June 6, 2023, WHD filed an *Order of Reference* with the Office of Administrative Law Judges (OALJ), referring the matter for a hearing regarding the determination, assessed penalties, and debarment.⁴

The case is currently set for a hearing on June 11, 2024, before the Department of Labor’s Chief Administrative Law Judge (Chief ALJ).⁵ During discovery, Respondents filed a subpoena request with the Chief ALJ and WHD filed a Motion to Quash that request.⁶ On April 10, 2024, the Chief ALJ issued an Order Granting Motion to Quash (“Subpoena Order”).

On May 10, 2024, Respondents filed a Petition for Review of the Subpoena Order with the Administrative Review Board (ARB or Board). Because the ALJ’s April 10, 2024 Subpoena Order does not constitute a final ruling as to the merits of Complainant’s INA case, the Petition for Review is interlocutory.

JURISDICTION AND STANDARD OF REVIEW

The Acting Secretary of Labor has delegated her authority to issue final administrative decisions in cases arising under the Act to the Board.⁷ The Board’s delegated authority includes the consideration and disposition of interlocutory appeals, “in exceptional circumstances, provided such review is not prohibited by statute.”⁸ The Secretary of Labor and the Board have repeatedly held that “[i]nterlocutory appeals are generally disfavored given the strong policy against piecemeal appeals.”⁹

² See Prehearing Scheduling Order at 1 (ALJ May 13, 2024).

³ *Id.*; see also 29 C.F.R. § 501.33.

⁴ Prehearing Scheduling Order at 1-2; see also 29 C.F.R. § 501.37(a).

⁵ Prehearing Scheduling Order at 3.

⁶ ALJ Subpoena Order at 2-3.

⁷ 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).

⁸ *Id.* at § 5(b)(69).

⁹ *Adm’r, WHD, U.S. Dep’t of Lab. v. Goldstar Amusements, Inc.*, ARB No. 2022-0027, ALJ Nos. 2021-TNE-00027, -00028, slip op. at 4 (ARB Sept. 30, 2022) (citations omitted); *Sharma v. Amazon Web Servs., Inc.*, ARB No. 2023-0017, ALJ No. 2020-LCA-00006, slip op. at 2 (ARB Jan. 26, 2023).

DISCUSSION

When a party seeks interlocutory review of an ALJ’s non-final order, the ARB has elected to look to the interlocutory review procedures used by federal courts, including providing for certification of issues involving a controlling question of law as set forth in 28 U.S.C. § 1292(b).¹⁰

The first step in the interlocutory appeal process is to request that the ALJ certify the interlocutory issue for appellate review as provided in 28 U.S.C. § 1292(b).¹¹ Respondents did not request the Chief ALJ to certify this issue for appellate review.¹²

When an ALJ has not certified an order for interlocutory review pursuant to 28 U.S.C. § 1292(b), the Board may still consider reviewing an interlocutory order that meets the “collateral order” exception to 28 U.S.C. § 1291.¹³ This exception applies if the appealed decision belongs to that “small class [of decisions] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.”¹⁴

To fall within the narrow “collateral order” exception to the traditional finality rule, Respondents must establish that the order being appealed: (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from the merits of the action; and (3) would be effectively unreviewable on appeal from a final judgment.¹⁵ If the ALJ’s Order “fails to satisfy *any one* of these requirements, it is not appealable under the collateral-order exception to § 1291.”¹⁶

¹⁰ *Goldstar Amusements, Inc.*, ARB No. 2022-0027, slip op. at 4 (citing *Powers v. Pinnacle Airlines, Inc.*, ARB No. 2005-0138, ALJ No. 2005-SOX-00065, slip op. at 5-6 (ARB Oct. 31, 2005)).

¹¹ *Id.* (citing *Kim v. SK Hynix Memory Sols.*, ARB No. 2020-0020, ALJ No. 2019-SOX-00012, slip op. at 4 (ARB Jan. 28, 2020) (citation omitted)).

¹² ALJ Prehearing Scheduling Order at 3.

¹³ 28 U.S.C. § 1291 provides that federal courts of appeal have jurisdiction of appeals from all final decisions of the district courts of the United States.

¹⁴ *Goldstar Amusements, Inc.*, ARB No. 2022-0027, slip op. at 5 (citing *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)).

¹⁵ *Id.* (citations omitted). This exception is “strictly construe[d]” to avoid “unnecessarily protracte[d] litigation.” *Id.* (citations omitted).

¹⁶ *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 276 (1988) (emphasis added); *Kossen v. Empire Airlines*, ARB No. 2021-0017, ALJ No. 2019-AIR-

Respondents have neither petitioned for nor established grounds for an interlocutory appeal under the “collateral order” exception. In any event, as the Chief ALJ explained in the Prehearing Scheduling Order, an essential element to satisfy the collateral order exception is that the disputed question is effectively unreviewable on appeal from a final judgment.¹⁷

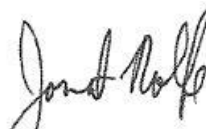
Here, the Subpoena Order is reviewable on appeal from a final judgment. The ARB has previously decided subpoena authority issues after a hearing on the merits and an ALJ has issued a judgment as part of the review of a final agency decision.¹⁸ Further, as we explained at length in *Goldstar*, there are other methods of review of subpoena orders than interlocutory review.¹⁹

Accordingly, we **DISMISS** Respondents’ Petition for Review.

SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



JONATHAN ROLFE
Administrative Appeals Judge

00022, slip op. at 2 (ARB Feb. 25, 2021) (Order Denying Interlocutory Appeal) (“The appeal must meet all of [the collateral order] criteria”).

¹⁷ Prehearing Scheduling Order at 3 (citing *Goldstar Amusements, Inc.*, ARB No. 2022-0027, slip op. at 6-9). As the ARB explained in *Goldstar Amusements, Inc. (Goldstar)*, appeals of court orders denying or granting subpoenas for depositions fall under the general rule that pre-hearing discovery rules are not immediately appealable. *Id.* at 8-9. *See also Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 108 (2009) (in general, discovery disputes do not implicate “substantial public interest” that overcomes finality principles).

¹⁸ *Goldstar Amusements, Inc.*, ARB No. 2022-0027, slip op. at 7 (citing *Childers v. Carolina Power & Light Co.*, ARB No. 1998-0077, ALJ No. 1997-ERA-00032, slip op. at 2 (ARB Dec. 29, 2000); *Adm’r, WHD, U.S. Dep’t of Lab. v. Integrated Informatics, Inc.*, ARB No. 2008-0127, ALJ No. 2007-LCA-00026, slip op. at 4 (ARB Jan. 31, 2011)).

¹⁹ *Goldstar Amusements, Inc.*, ARB No. 2022-0027, slip op. at 7, 7 n.43 (other avenues include seeking certification of the interlocutory issue from the ALJ and mandamus).