



IN THE MATTER OF:

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

ARB CASE NO. 2021-0047

ALJ CASE NO. 2018-TNE-00022

PROSECUTING PARTY,

DATE: January 4, 2023

v.

GRAHAM AND ROLLINS, INC.,

RESPONDENT.

Appearances:

For the Respondent:

Leon R. Sequeira, Esq.; *LRS Law*; Prospect, Kentucky

For the Administrator, Wage and Hour Division:

**Seema Nanda, Esq.; Jennifer S. Brand, Esq.; Rachel Goldberg, Esq.;
Sara A. Conrath, Esq.; *U.S. Department of Labor, Office of the
Solicitor*; Washington, District of Columbia**

**Before HARTHILL, Chief Administrative Appeals Judge, and BURRELL,
and PUST, Administrative Appeal Judges**

**ORDER DENYING MOTION TO EXTEND TIME TO FILE PETITION FOR
SECRETARIAL REVIEW**

EN BANC. This case arises under the Equal Access to Justice Act (EAJA), and its implementing regulations.¹ The merits of the original case were addressed by

¹ 5 U.S.C. § 504; 29 C.F.R. Part 16.

the Administrative Review Board (ARB or Board) in ARB Case Number 2019-0009 under the H-2B provisions of the Immigration and Nationality Act (H-2B, INA, or Act), as amended, and its implementing regulations.²

On June 26, 2018, an Administrative Law Judge (ALJ) dismissed the case, and the Board affirmed on November 16, 2020.³ Respondent Graham and Rollins, Inc. (Respondent) subsequently filed a motion for attorney's fees under EAJA on December 16, 2020. The ALJ found that EAJA applied to H-2B enforcement matters and awarded fees.⁴

The Administrator (Administrator) of the United States Department of Wage and Hour Division appealed to the Board. On December 22, 2022, the Board issued a Decision and Order affirming the ALJ's decision in part and reversing the decision in part and ultimately denying the petition for fees under EAJA.⁵

On December 28, 2022, the Administrator filed a Motion for Extension of Time to File Petition for Secretarial Review of the Board's December 22, 2022 Decision and Order. On December 30, 2022, Respondent filed Employer's Opposition To Principal Deputy Administrator's Motion For Extension Of Time To File Petition For Secretarial Review.

We hereby **DENY** the Administrator's motion because it exceeds the Board's

² 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b), 1184(c)(14). The statute's implementing regulations are found at 20 C.F.R. Part 655, subpart A. The original INA was enacted in 1952 and has been amended numerous times. Congress enacted the H-2B provision at issue in Section 404 of the Emergency Supplemental Appropriations Act for Defense, The Global War on Terror, and Tsunami Relief, 2005, Div. B, The Real ID Act of 2005, § 404, Pub. L. No. 109-13, 119 Stat. 231 (codified at 8 U.S.C. § 1184(c)(14)).

³ *Adm'r, Wage & Hour Div., U.S. Dep't of Labor v. Graham & Rollins, Inc.*, ALJ No. 2008-TNE-00022, slip op. at 3 (ALJ June 26, 2018), *adopted and attached by the Administrative Review Board, Adm'r, Wage & Hour Div., U.S. Dep't of Labor v. Graham & Rollins, Inc.*, ARB No. 2019-0009, ALJ No. 2018-TNE-00022 (ARB Nov. 16, 2020).

⁴ May 19, 2021 Recommended Decision and Order Awarding Attorney's Fees (R. D. & O.). On June 1, 2021, the Acting Administrator of WHD filed a Motion to Vacate the ALJ's Decision and Order. Graham & Rollins filed its Opposition to the Administrator's Motion to Vacate with the ALJ on September 15, 2021. On September 24, 2021, the ALJ issued an Order Denying Motion to Vacate (Denial Order).

⁵ *Adm'r, Wage & Hour Div., U.S. Dep't of Labor v. Graham & Rollins, Inc.*, ARB No. 2019-0009, ALJ No. 2018-TNE-00022 (ARB Dec. 22, 2022).


authority as set forth in the Secretary's Delegation of Authority and Assignment of Responsibility to the Administrative Review Board.⁶ The Delegation specifies at (6)(b)(1) that "[a]t any point during the first 14 calendar days after the date on which a decision of the Board was issued, a party to the case may file a petition with the Board for further review by the Secretary." The Delegation establishes the entire authority and responsibility the Secretary has delegated and assigned to the Board. We may not exceed this delegation by extending the time periods for filing set forth or otherwise.

However, a petition for Secretarial review under the Delegation may be timely filed with the Board on or before 11:59 p.m., on January 5, 2023. In the event such a petition for further review is filed, the Board will determine whether to refer the matter to the Secretary for further review pursuant to the terms of the Delegation.⁷


SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



THOMAS H. BURRELL
Administrative Appeals Judge



TAMMY L. PUST
Administrative Appeals Judge

⁶ 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).

⁷ Specifically, the Board will determine whether "the petition presents a question of law that is of exceptional importance and warrants review by the Secretary," and if so, "the Board shall advise the Secretary of such determination in writing and explain why the Board believes review by the Secretary is warranted." Delegation at (6)(b)(1).