In the Matter of:

NIKESH K. JAIN,

COMPLAINANT,

v.

EMPOWER IT, INC. d/b/a INFOBAHN TECHNOLOGIES,

RESPONDENT.

ARB CASE NO. 08-077

ALJ CASE NO. 2008-LCA-008

DATE: October 30, 2009

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Nikesh K. Jain, *pro se,* Stamford, Connecticut

For the Respondent:
Sally L. Adams, Esq., *Law Office of Sally L. Adams*, Milton, Massachusetts

FINAL DECISION AND ORDER

This case arises under the Immigration and Nationality Act, as amended (INA or the Act).[1] Nikesh K. Jain filed a complaint with the United States Department of Labor's Wage and Hour Division contending that his former employer, Empower IT, Inc. d/b/a Infobahn Technologies, violated the terms of the INA. A Department of Labor (DOL)

[1] 8 U.S.C.A. §§ 1101-1537 (West 2008). The INA's implementing regulations are found at 20 C.F.R. Part 655, Subparts H and I (2008).

Administrative Law Judge (ALJ) dismissed Jain's complaint on summary decision. Jain appealed. We affirm.

BACKGROUND

Jain, a citizen of India, is a computer programmer.[2] Infobahn is an information technology services company located in Sudbury, Massachusetts, that provides consulting, project management, and training.[3] It hired Jain in early 2006 as a computer programmer pursuant to the INA's H-1B visa program.[4] Jain resigned on January 31, 2007.[5]

The INA permits an employer to hire non-immigrant alien workers in "specialty occupations" to work in the United States for prescribed periods of time.[6] These workers are commonly referred to as H-1B nonimmigrants. Specialty occupations require specialized knowledge and a degree in the specific specialty.[7] An employer seeking to hire an H-1B worker must obtain DOL certification by filing a Labor Condition Application (LCA).[8] The LCA stipulates the wage levels and working conditions that the employer guarantees for the H-1B nonimmigrant.[9] After securing the certification, and upon approval by the Department of Homeland Security's United States Citizenship and Immigration Services (USCIS), the Department of State issues H-1B visas to these workers.[10]

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[2] Complainant's Exhibit D, "Employee Personal Interview Statement" at 1, 2; Complainant's Exhibit H, "Answer, Counterclaim and Demand for Trial by Jury of Defendant, Nikesh Jain" at 4. This record contains two sets of Complainant's Exhibits marked with the alphabet. To avoid confusion, cites refer to the exhibit's alphabetical mark and identify the document.

[3] Complainant's Exhibit A, Infobahn's Offer of Employment; Complainant's Exhibit J, Infobahn Technologies information.

[4] Complainant's Exhibit D, "Employee Personal Interview Statement" at 1.

[5] *Id.*

[6] 8 U.S.C.A. § 1101(a)(15)(H)(i)(b); 20 C.F.R. § 655.700.

[7] 8 U.S.C.A. § 1184(i)(1).

[8] 8 U.S.C.A. § 1182(n)(1); 20 C.F.R. §§ 655.731-733.

[9] 8 U.S.C.A. § 1182(n)(1); 20 C.F.R. §§ 655.731, 732.

[10] 20 C.F.R. § 655.705(a), (b).

Infobahn filed three LCAs under which it employed Jain. It filed an LCA on July 29, 2004, to employ Jain from July 29, 2004, to July 28, 2007, at $45,000 per year.[11] Jain did not arrive in the United States until February 7, 2006.[12] Infobahn paid Jain beginning March 1, 2006, at the rate of $45,000 per year.[13]

Infobahn filed a second LCA on March 20, 2006, to continue Jain's employment from March 20, 2006, to March 19, 2009, at $50,000 per year.[14] Infobahn paid Jain $50,000 per year from March 20, 2006, through June 30, 2006.[15]

Infobahn filed a third LCA on December 26, 2006, signed by its president, Ramesh Talluri, to continue Jain's employment from December 26, 2006, to December 25, 2009, at $70,000 per year.[16] Infobahn paid Jain $70,000 per year from July 1, 2006, until he resigned on January 31, 2007.[17] In his resignation letter, Jain detailed issues with Infobahn and asserted, among other things, that Infobahn had increased the amount of his health insurance premiums and deducted them from his wages without telling him in advance about the increases, and that Infobahn had not paid him from February 7 - 28, 2006.[18] Talluri explained that when Infobahn's insurance plan was renewed in November 2006, its costs "substantially increased" and he had to increase the employees' premiums.[19] Talluri also stated that payroll records show that Infobahn had paid Jain "from the date you made yourself available for work to the last day of employment."[20]

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[11] Complainant's Exhibit C, Labor Condition Application dated July 29, 2004.

[12] Complainant's Exhibit H, "Answer, Counterclaim and Demand for Trial by Jury of Defendant, Nikesh Jain" at 4; Complainant's Exhibit D, "Employee Personal Interview Statement" at 1.

[13] Complainant's Exhibit D, "Employee Personal Interview Statement" at 1. The parties dispute whether Jain was available to begin work from February 8 to February 28, 2006. Jain claims that he was ready to work on February 8. Complainant's Exhibit D, "Employee Personal Interview Statement" at 1. But Infobahn submitted an undated letter purportedly signed by Jain, in which he states that he is available on March 1, 2006. Respondent's Motion to Dismiss dated March 5, 2008, Tab F.

[14] Complainant's Exhibit C, Labor Condition Application dated March 20, 2006.

[15] Complainant's December 19, 2007 Request for Hearing.

[16] Complainant's Exhibit C, Labor Condition Application dated December 26, 2006.

[17] Complainant's Exhibit D, Pay Records.

[18] Complainant's Exhibit B, February 5, 2007 Resignation Letter.

[19] Complainant's Exhibit B, February 9, 2007 e-mail from "Ramesh."

[20] *Id.*

Jain contacted DOL. A Wage and Hour Inspector, Joan M. Daly, filled out an Employee Personal Interview Statement dated July 30, 2007, which Jain signed and Daly witnessed.[21] Jain stated that he had arrived in the United States on February 7, 2006, that he had been ready to work as of February 8, that Infobahn had sent him on interviews but had not paid him until March 1, 2006, when it paid him at $45,000 per year.[22] Jain also told Daly that when he arrived in the United States, Infobahn gave him $1,000, which it deducted from his first two paychecks.[23] Jain said that Infobahn deducted from his wages differing amounts of health insurance premiums through December 2006. Jain stated that the premium amount varied depending on whether he was "single," whether his family was living with him or "went back to India for a month," or whether Infobahn's "price for health insurance" had increased as Infobahn had told him it had in November 2006.[24] Jain also claimed that Infobahn had deducted a full month's health insurance premium in March 2006 for coverage only from March 15.[25] Jain said that Infobahn was deducting different amounts of premiums from different employees for the same insurance.[26] Jain also claimed that while still in India, he had paid Infobahn $1000 "for the H1B visa," for which they had never reimbursed him.[27] Jain further stated that Infobahn had not paid his airfare from India but had paid the airfare of other H-1B workers.[28]

Jain filed a complaint two days later on August 1, 2007.[29] Jain claimed that Infobahn had: (1) failed to pay him the higher of the prevailing or actual wage; (2) made illegal deductions from his wages; and (3) had required him to pay all or part of a $500/$1000 filing fee.[30] Wage and Hour's investigation followed. Daly detailed her

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21 Complainant's Exhibit D, "Employee Personal Interview Statement" at 1.

22 *Id.*

23 *Id.* at 1-2.

24 *Id.* at 2.

25 *Id.*

26 *Id.*

27 *Id.* at 2-3.

28 *Id.* at 3.

29 Complainant's Exhibit D, Complaint at 1.

30 *Id.* at 2.

findings in an undated "H1B Narrative."[31] She wrote that "[t]he window is 7/31/06 to 7/30/07."[32] With regard to Infobahn's alleged failure to pay the higher of the prevailing or actual wage, Daly found that Jain's "complaint was not substantiated;" that Jain had received $70,000 per year from July 31, 2006, to July 30, 2007, when the prevailing annual wage was $54,496 per year.[33] Daly concluded that Infobahn "did not violate any of the provisions of [20 C.F.R. Part] 655 relative to this worker during the window."[34] Daly recommended that "the determination letter be sent and the file be closed."[35] Wage and Hour's District Director determined, for the Administrator, on November 8, 2007, that there had been no violation of the INA and its provisions related to the H-1B nonimmigrant worker program.[36] Jain objected to the Administrator's finding and asked for a hearing.[37]

The parties submitted pre-hearing reports to the ALJ.[38] Infobahn objected to several issues Jain raised as either time-barred or outside the scope of the violations alleged in the Complaint. Infobahn also filed a Motion to Dismiss. It argued: (1) that the Complaint did not include the facts and circumstances that caused Jain to believe that Infobahn had violated the INA; (2) that the sole issue preserved for hearing was Infobahn's alleged failure to pay Jain the higher of the prevailing or actual wage, and (3) that Jain's claims that Infobahn did not pay him from February 8 - 28, 2006, and did not pay him at the correct wage rate from March 1, 2006, through June 30, 2006, were time-barred.[39]

In opposing the Motion, Jain replied that he had given Daly a description of the facts supporting his Complaint and had set forth in his pre-hearing report the claims he had raised with her.[40] The ALJ ruled that because the Administrator alone determines

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[31] Complainant's Exhibit C, Joan M. Daly's Undated "H1B Narrative."

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] Complainant's Exhibit B, Administrator's November 8, 2007 Determination.

[37] Complainant's December 19, 2007 hearing request.

[38] Complainant's February 28, 2008 Pre-Hearing Report; Respondent's February 29, 2008 Pre-Hearing Report.

[39] Respondent's March 5, 2008, Motion to Dismiss.

[40] Complainant's March 12, 2008 Reply on Respondent's Motion to Dismiss at 1-2.

whether a complaint warrants investigation, the sufficiency of the complaint cannot be attacked in a hearing on that determination. Furthermore, the ALJ found that the claims that Infobahn did not pay Jain in February 2006 and did not pay him correctly in March through June 2006 were timely as Jain filed his August 1, 2007 Complaint within twelve months of when he was last employed under the H-1B program or January 31, 2007. The ALJ also ruled that he did not have jurisdiction to review claims that Jain did not raise in the Complaint and that Wage and Hour did not investigate.[41] The ALJ allowed Jain until March 21, 2008, to submit an affidavit or other evidence showing that the Complaint included, and Wage and Hour investigated, issues not raised in his Complaint.[42] In response, on March 19 Jain filed an affidavit and attached Daly's "H1B Narrative."[43]

That same day, Infobahn filed a Renewed Motion for Summary Judgment Based on Newly Discovered Evidence. Infobahn asserted that Daly's "H1B Narrative" proves that the sole issue investigated was whether Infobahn paid Jain the prevailing wage from July 31, 2006, to July 30, 2007.[44] Infobahn argued that because an ALJ cannot review an Administrator's decision whether to investigate a complaint, Jain could not challenge Daly's decision not to investigate all other claims.[45] Therefore, Infobahn argued that it was entitled to summary judgment on all claims that Wage and Hour did not investigate.[46] Infobahn also argued that it was entitled to summary judgment on the prevailing wage complaint that Wage and Hour did investigate because Infobahn's uncontroverted payroll records show that it paid Jain more than the prevailing wage when it paid him $70,000 annually from July 31, 2006, until his January 31, 2007 resignation.[47]

The ALJ then allowed Jain additional time to show that there was a genuine issue of fact warranting a hearing on whether Infobahn paid Jain the prevailing wage rate from July 31, 2006, to July 30, 2007.[48] In response, Jain submitted an affidavit in which he stated the issues he had discussed with Daly and submitted documents previously

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41 ALJ's March 14, 2008 Order on Pre-Hearing Motions at 9-14.

42 *Id.* at 14, 16.

43 Complainant's March 19, 2008 Affidavit.

44 Respondent's Renewed Motion for Summary Judgment Based on Newly Discovered Evidence at 2.

45 *Id.* at 2-3.

46 *Id.*

47 *Id.* at 3; Complainant's Exhibit D, Pay Records.

48 ALJ's March 19, 2008 Order at 3, 4.

submitted.[49] In his March 21, 2008 [Recommended] Decision and Order (R .D. & O.), the ALJ found that Infobahn was entitled to summary judgment on all claims not investigated and on the sole issue investigated, the pay issue, because the evidence showed that Infobahn paid Jain more than the prevailing wage rate from July 31, 2006, to July 30, 2007.[50] Jain appealed. The ARB issued a Notice of Intent to Review on April 24, 2008.

JURISDICTION AND STANDARD OF REVIEW

The Administrative Review Board (ARB) has jurisdiction to review the ALJ's decision.[51] Under the Administrative Procedure Act, the ARB, as the Secretary of Labor's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . . ."[52] The ARB has plenary power to review an ALJ's factual and legal conclusions de novo.[53] We review a grant of summary decision de novo, i.e., under the same standard that that ALJs employ. Summary judgment is appropriate "if the pleadings, affidavits, material obtained by discovery, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision."[54] Accordingly, the Board will affirm an ALJ's recommendation that summary decision be granted if, upon review of the evidence in the light most favorable to the non-moving party, we conclude, without weighing the evidence or determining the truth of the matters asserted, that there is no genuine issue as to any material fact and that the ALJ correctly applied the relevant law.[55]

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[49] Complainant's March 19, 2008 Affidavit.

[50] R. D. & O. at 6, 7.

[51] 8 U.S.C.A. § 1182(n)(2); 20 C.F.R. § 655.845. *See* Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the ARB the Secretary's authority to review cases arising under, inter alia, the INA).

[52] 5 U.S.C.A. § 557(b) (West 1996).

[53] *Yano Enters., Inc. v. Administrator*, ARB No. 01-050, ALJ No. 2001-LCA-001, slip op. at 3 (ARB Sept. 26, 2001); *Administrator v. Jackson*, ARB No. 00-068, ALJ No. 1999-LCA-004, slip op. at 3 (ARB Apr. 30, 2001).

[54] 29 C.F.R. § 18.40(d) (2009).

[55] *Johnsen v. Houston Nana, Inc., JV,* ARB No. 00-064, ALJ No. 1999-TSC-004, slip op. at 3 (ARB Feb. 10, 2003); *Stauffer v. Wal-Mart Stores, Inc.*, ARB No. 99-107, ALJ No. 1999-STA-021, slip op. at 6 (ARB Nov. 30, 1999).

DISCUSSION

1. Infobahn is Entitled to Summary Decision on Claims not Investigated.

The ALJ found that Daly's "H1B Narrative" shows that she investigated only one issue, namely whether Infobahn paid Jain the prevailing wage from July 31, 2006, to July 30, 2007.[56] The ALJ determined that in the absence of any evidence that the Administrator investigated any other issue, Infobahn is entitled to summary decision on all other issues as there is no jurisdiction to review claims that have not been investigated and determined by the Administrator.[57]

The Administrator investigates complaints filed by an aggrieved party alleging that an employer failed to meet a condition specified in the LCA or misrepresented material facts in the LCA.[58] The complaint must set forth sufficient facts for the Administrator to determine whether there is reasonable cause to believe that a violation as described in 20 C.F.R. § 655.805 has been committed, and therefore that an investigation is warranted.[59] If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator "shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary."[60] "No hearing or appeal pursuant to this subpart shall be available where the Administrator determines that an investigation on a complaint is not warranted."[61] Thus, unless the Administrator finds that the facts presented in a complaint establish reasonable cause for Wage and Hour to investigate, there will be no investigation and ensuing determination.[62] The INA regulations governing an ALJ's review of an

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56 R. D. & O. at 6. Daly limited the investigation to the 12-month window preceding the date on which Jain filed his complaint, apparently because INA claims that allegedly occur more than 12 months before the complaint is filed are time-barred and thus are not actionable. *See* 8 U.S.C.A. § 1182(n)(2)(A); 20 C.F.R. § 655.806(a)(5).

57 R. D. & O. at 6.

58 8 U.S.C.A. § 1182(n)(2)(A); 20 C.F.R. § 655.806(a).

59 8 U.S.C.A. § 1182(n)(2); 20 C.F.R. § 655.806(a)(2).

60 20 C.F.R. § 655.806(a)(2).

61 *Id.*

62 *Watson v. EDS Corp.*, ARB Nos. 04-023, 029, 050, ALJ Nos. 2004-LCA-009, 2003-LCA-030 and *Watson v. Bank of America*, ARB No. 04-099, ALJ No. 2004-LCA-023, slip op. at 5 (ARB May 31, 2005).

Administrator's determination state that a hearing may be requested in two instances. First, where the Administrator determines, after investigation, that there is no basis for finding that an employer committed violations, and second, where the Administrator determines, after investigation, that the employer has violated the INA.[63] Thus, the prerequisite for requesting a hearing on a claim is that the Administrator has conducted an investigation and made a determination on that claim.[64]

The ALJ's findings are consistent with the Act and its regulations and are supported by the record. It is clear from Daly's "H1B Narrative" that she investigated only Jain's allegation that Infobahn did not pay him the prevailing wage.[65] Because Jain is not entitled to a hearing or appeal of the Administrator's decision not to investigate any other issue, the ALJ's finding that the prevailing wage issue was the only issue properly before him is consistent with applicable law.[66] Therefore, the ALJ properly concluded, as do we, that Infobahn is entitled to summary decision on all other issues.

Jain argues to us that Daly investigated all the issues Jain raised with him.[67] But Jain adduces no evidence to support his position. Jain also notes that Daly's "H1B Narrative" was "partially deleted" and argues that it does not reflect all of the issues she investigated.[68] But as Infobahn points out, this deleted information concerns the identity of a source and does not pertain to what issues Daly investigated.[69] Jain also argues that the Administrator did not notify him that any of his claims failed to present reasonable cause for an investigation.[70] But in *Watson* we held:

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63 20 C.F.R. § 655.820(b)(1), (2).

64 *Watson*, slip op. at 5.

65 Complainant's Exhibit C, Joan M. Daly's Undated "H1B Narrative."

66 *See* 20 C.F.R. §§ 655.806, 655.820(b)(1)-(2).

67 Complainant's Opening Brief, paras. 5, 14, 18.

68 *Id.* at paras. 9, 13, 16; *see* Complainant's Exhibit C, February 22, 2008 Letter from Corlis L. Sellers (characterizing attached "H1B Narrative," provided to Jain in response to his Freedom of Information Act request, as "partially deleted, as the information is protected from disclosure under exemption 7(d) as disclosing the identity of a confidential source.").

69 Respondent's Brief at 7, n.6.

70 Complainant's Brief, paras. 5, 18; *see* 20 C.F.R. § 655.806(a)(2) (If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary.).

> Thus, in all four complaints, the Administrator declined to investigate. Therefore, the Administrator made no determination. Without that determination, no hearing was possible. A reading of the statute and its implementing regulations leads us to conclude that the Administrator has complete discretion in deciding whether to investigate a complaint filed by an aggrieved party such as Watson. If the Administrator decides that a complaint provides no reasonable cause for an investigation, *whether or not that decision is communicated to the complainant*, there is no other administrative recourse.[71]

Unlike the case in *Watson*, the Administrator here did conduct an investigation but did not notify Jain of his decision that some claims did not present reasonable cause to warrant investigation. The Administrator's authority to make that decision is discretionary, and the fact that he did not notify Jain of his decision does not change the fact that Jain cannot appeal from it. Furthermore, even if the Administrator had notified Jain of his intention only to investigate alleged violations within the 12-month window, Jain has failed to proffer any additional information that could have changed the Administrator's determination that the only actionable violations were those that allegedly occurred from July 31, 2006, to July 30, 2007.

3. Infobahn is Entitled to Summary Decision on the Issue of Whether Infobahn Properly Paid Jain from July 31, 2006, to July 30, 2007.

The enforceable wage obligation for an H-1B employer is the "actual wage" or the "prevailing wage," whichever is greater."[72] An H-1B employer determines the prevailing wage that he lists on the LCA "on the best information available as of the time of filing the application;" he is not required to use any "specific methodology," but may use any "legitimate source" of wage data, including a collective bargaining agreement.[73] "Actual wage" is the wage the employer pays to "all other individuals with similar experience and qualifications for the specific employment in question," but "[w]here no such other employees exist at the place of employment, the actual wage shall be the wage paid to the H-1B non-immigrant."[74]

The ALJ found that the uncontroverted evidence establishes that Infobahn paid Jain more than the prevailing annual wage during the period from July 31, 2006, to July

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71 *Watson*, slip op. at 6 (emphasis added).

72 8 U.S.C.A. § 1182(n)(1); 20 C.F.R. § 655.731(a)

73 20 C.F.R. § 655.731(a)(2).

74 20 C.F.R. § 655.731(a)(1).

30, 2007.[75] The ALJ noted Infobahn's argument in support of its Renewed Motion for Summary Judgment that Jain did not contest that Infobahn paid him at the annual wage rate of $70,000 beginning July 1, 2006.[76] Infobahn's payroll records show that it paid Jain no less that $5,833.33 monthly or $70,000 annualized from July 2006, to January 2007 when Jain resigned.[77] The ALJ noted that in opposing the Motion, Jain stated that he had "never requested to investigate my issues for the period from July 31, 2006 to July 30, 2007," and did not challenge Infobahn's position regarding its payroll records.[78] The ALJ found that Jain had alleged no facts contradicting Infobahn's position and, therefore, that there is no genuine issue of material fact.[79] The ALJ thus concluded that Infobahn is entitled to summary decision on this issue and dismissed the case.[80] On appeal to us, Jain repeats his claim that Infobahn failed to pay him the prevailing wage and argues that the company "failed to give any valid and legitimate reason why the window of investigation should not go beyond the period specified in the 'H1B Narrative.'"[81] Infobahn urges the Board to affirm the ALJ's conclusion that Jain failed to establish that there is an issue of material fact that Infobahn paid Jain the prevailing wage.

The investigative period from July 31, 2006, to July 30, 2007, determined by the Administrator not the Respondent, is covered by two LCAs. Under the first, the prevailing wage was $49,483 per year and the actual wage that Infobahn paid Jain was initially $50,000 per year and subsequently, as of July 1, 2006, $70,000 per year.[82] Under the second LCA, the prevailing wage was $68,058 per year and the actual wage that Infobahn paid Jain until his January 31, 2007 resignation was $70,000 per year.[83] This evidence is uncontroverted and supports the ALJ's finding that Infobahn paid Jain the higher of the

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75 R. D. & O. at 7.

76 *Id.*; Respondent's Renewed Motion for Summary Judgment Based on Newly Discovered Evidence at 3, citing Complainant's December 19, 2007 Request for Hearing at 2; Complainant's Exhibit D, Pay Records.

77 Complainant's Exhibit D, Pay Records.

78 R. D. & O. at 7, citing Complainant's March 19, 2008 Affidavit at para. 4.

79 R. D. & O. at 7.

80 *Id.* at 7, 8.

81 Complainant's Opening Brief at paragraph 11; Complainant's Rebuttal Brief at paragraph 3.

82 Complainant's Exhibit C, Labor Condition Application dated March 20, 2006.

83 Complainant's Exhibit C, Labor Condition Application dated December 26, 2006; Complainant's Exhibit D, Pay Records.

prevailing or actual wage during the period investigated from July 31, 2006, to July 30, 2007. Therefore, the ALJ properly concluded, as do we, that there is no issue of fact as to whether Infobahn paid Jain at least the prevailing wage. Accordingly, we find that Infobahn is entitled to summary decision on this issue.

4. The ALJ's Error

In its Motion to Dismiss, Infobahn argued that Jain's claims of non-payment of wages in February 2006 and underpayment of wages in March through June 2006 were not actionable because those alleged INA violations occurred more than 12 months before Jain filed his Complaint on August 1, 2007. The ALJ determined that these claims were actionable because "the applicable regulation permits an aggrieved party such as the Complainant to raise H-1B pay violations that occurred at anytime during the period of his employment as long as the complaint is filed within 12 months of when the employee was last employed under an H-1B visa."[84]

This was error because the INA requires that the complaint must be filed "not later than 12 months after the latest date on which the alleged violation(s) were committed."[85] Thus, the limitations period begins to run when the violation occurred, not when the "employee was last employed under an H-1B visa."[86] Therefore, since Jain's claims that he was not paid in February 2006 and was underpaid in March-June 2006 were not actionable, Infobahn was entitled to summary decision on those claims. By the same token, even if the Administrator had investigated Jain's claims about illegally deducting amounts from his first two paychecks and having to pay all or part of the filing fee, Infobahn was entitled to summary decision on those claims too since they were not actionable because they allegedly occurred more than a year before Jain filed his Complaint.[87]

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[84] ALJ's March 14, 2008 Order on Pre-Hearing Motions at 12.

[85] 20 C.F.R. § 655.806(a)(5); *see* 8 U.S.C.A. § 1182(n)(2)(A).

[86] *Cf. Gupta v. Jain Software Consulting, Inc.*, ARB No. 05-008, ALJ No. 2004-LCA-039, slip op. at 4-5 (ARB Mar. 30, 2007).

[87] Jain also told Daly that Infobahn deducted varying amounts from his wages for health insurance premiums through December 2006. Complainant's Exhibit D, "Employee Personal Interview Statement" at 1, 2. But employers under the H-1B nonimmigrant worker program, such as Infobahn, are authorized to deduct from that worker's wages "contribution[s] to premium[s] for health insurance policy covering all employees." 20 C.F.R. § 655.731(c)(9)(ii). Jain does not allege that these deductions were unauthorized or illegal under the INA. Jain did write to a DOL employee that the insurance premium deductions violated his employment contract with Infobahn. Complainant's Exhibit F, Jain's March 24, 2008 Letter to George G. Roux. Private employment agreements are outside the scope of the INA and are beyond our jurisdiction.

CONCLUSION

The ALJ properly recommended that Infobahn be granted summary decision because no issue of fact exists as to whether Jain was entitled to a hearing on issues that the Administrator did not investigate or as to whether Infobahn paid Jain the proper amount of wages from July 31, 2006, until July 30, 2007. Therefore, we **DISMISS** Jain's Complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge

See Kersten v. LaGard, Inc. and Masco Corp., ARB No. 06-111, ALJ No. 2005-LCA-017, slip op. at 7-8 n.23 (ARB Oct. 17, 2008).