



**In the Matter of:**

**ADMINISTRATOR, WAGE and  
HOUR DIVISION,**

**PROSECUTING PARTY,**

**v.**

**WINVISION, INC.,**

**RESPONDENT.**

**ARB CASE NO. 09-084**

**ALJ CASE NO. 2006-LCA-024**

**DATE: October 7, 2009**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Prosecuting Party:*

**Joan Brenner, Esq., Paul L. Frieden, Esq., William C. Lesser, Esq., Steven J. Mandel, Esq., Carol A. De Deo, Esq., United States Department of Labor, Washington, District of Columbia**

*For the Respondent:*

**Robert D. Baker, Esq., San Jose, California**

**FINAL DECISION AND ORDER DISMISSING APPEAL**

The Administrative Review Board received a petition for review on April 27, 2009, from the Respondent, Winvision, Inc., requesting the Board to review the Decision and Order Affirming Administrator's Determination as Modified (D. & O.) that a Department of Labor Administrative Law Judge (ALJ) issued in this case arising under the Immigration and Nationality Act, as amended.<sup>1</sup> On May 21, 2009, the Board issued a Notice of Intent to Review, in which we ordered Winvision to file an opening brief on or

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<sup>1</sup> 8 U.S.C.A §§ 1101(a)(15)(H)(i)(b), 1182(n), 1184(c) (West 2007) (INA). The Administrative Review Board has jurisdiction to review the ALJ's decision. 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).

before June 22, 2009. The Board's Order specifically provided, "If the Complainant fails to file the initial brief on time, the Board may dismiss his appeal. *See, e.g., McQuade v. Oak Ridge Operations Office*, ARB No. 02-087, ALJ Nos. 1999-CAA-007 to -010 (ARB Oct. 18, 2002); *Pickett v. TVA*, ARB No. 02-076, ALJ No. 2001-CAA-018 (ARB Oct. 9, 2002)."

Winvision has failed to file a brief as ordered. On July 21, 2009, the Prosecuting Party filed a Motion to Dismiss Petition for Review on the grounds that the Respondent has failed to file an opening brief. Accordingly, we ordered Winvision to show cause no later than August 24, 2009, why the Board should not dismiss this appeal because of the Respondent's failure to prosecute it. The Board cautioned Winvision that if it failed to timely respond to this order, the Board may dismiss this appeal without further notice. Winvision has not filed a response to the Board's Show Cause Order.

Winvision's failure to file an initial brief or to respond to the Board's order to show cause why the Board should not dismiss its appeal because it failed to file a brief constitutes a failure to prosecute its case.<sup>2</sup> The Board's authority to effectively manage its affairs, including the authority to require compliance with Board briefing orders, is necessary to "achieve orderly and expeditious disposition of cases."<sup>3</sup> This Board has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.<sup>4</sup> Accordingly, we **GRANT** the Administrator's Motion and **DISMISS** the Respondent's appeal because it has declined to prosecute it before the Board.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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<sup>2</sup> Courts "possess the 'inherent power' to dismiss a case for lack of prosecution." *Solnicka v. Washington Pub. Power Supply Sys.*, ARB No. 00-009, ALJ No. 1999-ERA-019, slip op. at 3 (ARB Apr. 25, 2000); *Reid v. Niagara Mohawk Power Corp.*, ARB No. 03-039, ALJ No. 2002-ERA-003, slip op. at 4 (ARB Dec. 16, 2003) (dismissing case for failing to file initial brief).

<sup>3</sup> *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

<sup>4</sup> *See Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-007 (ARB Mar. 19, 2003) (dismissing complaint for failure to comply with briefing order); *cf.* Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed. R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).