



In the Matter of:

MOHAMMED REHAN PURI,
COMPLAINANT,

ARB CASE NO. 10-004
ALJ CASE NOS. 2008-LCA-008
2008-LCA-043

v.

DATE: November 30, 2011

UNIVERSITY OF ALABAMA
BIRMINGHAM HUNTSVILLE,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

**Kelly A. Bennington, Esq. and David E. Larson, Esq.; Altick & Corwin, Co.,
L.P.A., Dayton, Ohio**

For the Respondent:

J. Neil Grindstaff, Esq.; Littler Mendelson, PC; Cleveland, Ohio

**Before: E. Cooper Brown, Deputy Chief Administrative Appeals Judge; Joanne
Royce, Administrative Appeals Judge; and Lisa Wilson Edwards, Administrative
Appeals Judge.**

DECISION AND ORDER OF REMAND

This case arises under the Immigration and Nationality Act, as amended (INA or the Act).¹ Mohammed Rehan Puri filed a complaint with the United States Department of Labor's Wage and Hour Division (Wage and Hour) alleging that his employer, the University of Alabama Birmingham-Huntsville (the University), violated the terms of the INA by failing to pay wages to which he was entitled. Following the Wage and Hour Division's issuance of a Determination Letter, Puri requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ). In a Decision and Order issued September 14, 2009, the ALJ dismissed Puri's hearing request pursuant to the University's motion for summary decision.² Puri timely appealed to the Administrative Review Board (ARB). For the reasons that follow, we vacate the ALJ's Decision and Order and remand the case for further consideration.

BACKGROUND

The University of Alabama hired Puri as a medical resident under the INA's H-1B visa program in July 2006. In the Labor Condition Application (LCA) under which the University employed Puri, his employment was for the period July 1, 2006 to July 1, 2009, at an annual salary of \$40,782. In February 2007, the University notified Puri that it was revoking his residency appointment and terminating his employment effective immediately. Puri challenged the University's decision through its internal review process and, while his challenge was pending, filed a complaint on June 18, 2007, with the Department of Labor's Wage and Hour Division.

Puri's Wage and Hour complaint, filed *pro se*, alleged that since March 5, 2007, the University had neither paid him wages nor provided benefits to which he was entitled under the LCA, and that the withholding of his wages and benefits violated H-1B rules and regulations because he had not as yet "been finally terminated through immigration."³

Wage and Hour interviewed Puri twice in the course of investigating his complaint.⁴ The first interview, on June 26, 2007, addressed the circumstances of his

¹ 8 U.S.C.A. §§ 1101-1537 (West 1999 & Thompson Reuters Supp. 2011). The INA's implementing regulations are found at 20 C.F.R. Part 655, Subparts H and I (2011).

² Decision and Order Denying Complainant's Motion for Summary Decision, Granting Respondent's Motion for Summary Decision and Dismissing Request for Hearing (Sept. 14, 2009).

³ See Puri's complaint filed with Wage and Hour on June 18, 2007, captioned "H1B VISA Unpaid Wages Issue," attached as an exhibit to the Administrator's Submission Pursuant to Status Order (filed with the ALJ Mar. 24, 2009).

⁴ Both interviews are attached as exhibits to the Administrator's Submission Pursuant to Status Order.

employment by the University, the University's purported termination of his employment on or about February 19, 2007, the fact that he received his last paycheck on March 5, 2007, and the fact that he was challenging the University's attempt to terminate his employment through the University's internal review process. Puri indicated that the University had not terminated his H-1B visa status and that "according to my H-1B visa my employment status with the hospital (noted on the LCA) was to expire 6/30/2009." Puri also noted that the University had made him pay a \$1,000 "premium processing" fee to secure his H-1B visa.

In Puri's second Wage and Hour interview on July 19, 2007, Puri indicated that the University had attempted to settle his complaint by paying him the wages to which he was entitled through the end of June 2007, but that he rejected the University's offer. Puri indicated that notwithstanding his rejection of the settlement offer, on June 30, 2007, the University, without Puri's consent, transferred the offered payment to his bank account. Puri challenged the adequacy of the payment amount, asserting that it did not cover all that the University owed him.

Puri's internal appeal with the University subsequently failed, and the University's decision to discharge him became final on July 27, 2007. Three days later, on July 30, the University notified the U.S. Citizenship and Immigration Services (USCIS) that it wished to cancel Puri's H-1B visa. The University took no further action with respect to termination of Puri's employment until June 12, 2009, when it tendered to Puri a check in the amount of \$1,506.00 as payment for the reasonable cost of return transportation to Puri's home country.

Following Wage and Hour's investigation of Puri's complaint, the Assistant District Director, on behalf of the Administrator, issued a Determination Letter dated July 1, 2008. The Administrator found that the University violated the terms of the INA when it failed to pay wages as required under 20 C.F.R. § 655.731, including "failure to pay the required wage rate for nonproductive time and by taking illegal deductions." The Administrator ordered the University to reimburse Puri the \$1,000 H-1B visa processing fee that he had paid, advised the University that it was "liable for any ongoing violations," and ordered the University "to comply with 20 C.F.R. § 655.731 in the future."⁵

In representations made to the ALJ following Puri's request for hearing, the Administrator explained that Wage and Hour had determined that the University had failed to pay Puri the required wages for the period from February 19, 2007 until May 1, 2007, but she did not order the University to pay back wages because she had also

⁵ Administrator's Determination Letter (July 1, 2008). The Determination Letter referenced an enclosed "Summary of Unpaid Wages, Form WH-56" on which the \$1,000 amount of back wages owed Puri was listed. The referenced Form WH-56 is attached to the Administrator's Submission Pursuant to Status Order (filed with the ALJ Mar. 24, 2009).

determined that the University's June 30, 2007 payment to Puri satisfied the University's obligation regarding back wages. The Administrator also explained that the \$1,000 award constituted reimbursement for the \$1,000 processing fee that Puri had paid for his H-1B visa application.⁶ The Administrator did not explain her failure to order the payment of H-1B wages for the period after May 1, 2007.

ALJ PROCEEDINGS

By letter dated July 16, 2008, Puri, still pro se, challenged the Administrator's determination and requested a hearing before a Department of Labor ALJ. As grounds for his hearing request, Puri alleged that the University had failed to pay his wages as required, had taken illegal deductions, and had discriminated against him and other H-1B medical residents. Puri asked that the University be barred from the H-1B visa program and that civil money penalties be imposed "for my sufferings, mental trauma and the kind of discriminatory treatment I received from the University."

In response to the presiding ALJ's subsequent order seeking clarification of his complaint, Puri asserted, in relevant part, that the University failed to pay back wages owed from March 3 to June 29, 2007; that the amount tendered was inadequate due to improper tax deductions; and that the University "refused to fulfill its duties" to compensate him notwithstanding that the University "kept [Puri] on an H-1B visa."⁷

In response to the University's motion to dismiss, Puri further clarified the nature of his complaint before the ALJ. Puri asserted that the University owed him additional back wages from June 30 through July 30, 2007; had made an illegal deposit to his bank account; had failed to inform him as to his employment status; and that despite the University's representation that Puri remained on its payroll until July 27, 2007, he had not been paid for that period. Puri further asserted that he was entitled to be paid "through the end of the approved H-1B and labor condition application period." Puri again requested that the University "be required to pay civil money penalties" and be "suspended" from the H-1B program.⁸

In her January 2009 Status Order, the ALJ noted several deficiencies in and information missing from the Administrator's Determination. She indicated:

While the Administrator's Determination found that employer violated 20 C.F.R. § 655.731 and indicated a total

⁶ Administrator's Submission Pursuant to Status Order (filed with the ALJ March 24, 2009). The University reimbursed Puri the \$1,000 processing fee in December 2007.

⁷ Puri's Response to Show Cause Order (Sept. 8, 2008).

⁸ Puri's Response to Motion to Dismiss (Jan. 8, 2009).

amount to be paid to 84 nonimmigrant workers, it did not specify the amount to be paid, if any, to Complainant in this case. *The Administrator also did not indicate how it determined the amount of back wages due to Complainant.* Nor did the Administrator indicate whether the violations by Employer were willful or substantial.

Without this information it is impossible to determine whether the amount of back wages assessed as requiring payment to Complainant was proper.^[9]

The ALJ directed the Administrator to provide the missing information including, “What amount, if any, that was due to the Complainant and the reasons therefor.”¹⁰ The ALJ held the Respondent’s motion in abeyance pending receipt of the information. In response to the ALJ’s request, the Administrator filed the Administrator’s Submission Pursuant to Status Order described *supra* at p. 3. The Administrator did not indicate how she determined the amount of back wages due Puri although the ALJ had requested that information.

In her initial Decision and Order issued April 27, 2009, the ALJ granted in part and denied in part the University’s motion to dismiss. The ALJ held that Puri had standing to request a hearing on his claim for payment of wages, found that there existed material issues of fact precluding ruling in the University’s favor as a matter of law with respect to the back wages owed, and deferred a determination on the appropriateness of imposing civil penalties until hearing on the merits. Because the Administrator had not found any willful violations of the governing H-1B regulations, the ALJ denied Puri’s request that the University be debarred from the H-1B program. Finally, the ALJ held that Puri’s claim of unlawful discrimination was not properly before her because Puri had not alleged retaliation for activity protected by the INA’s whistleblower provisions at 20 C.F.R. § 655.801 and, even if he had, the Administrator had not investigated and determined such a claim.¹¹

Following subsequent cross-motions for summary decision, the ALJ ultimately dismissed Puri’s request for a hearing on September 14, 2009.¹² At that point, the only

⁹ Status Order at 2 (emphasis added).

¹⁰ *Id.* at 3.

¹¹ Decision and Order Granting in Part and Denying in Part Respondent’s Motion to Dismiss (Apr. 27, 2009).

¹² Decision and Order Denying Complainant’s Motion for Summary Decision, Granting Respondent’s Motion for Summary Decision and Dismissing Request for Hearing (Sept. 14, 2009).

pending issue was whether the University was required to pay Puri wages from July 27, 2007, the date the University's decision to discharge him became final, to July 1, 2009, the end of Puri's H-1B LCA employment period.¹³ In the ALJ's opinion, this claim, which encompassed the issue of whether the University had effected a "bona fide" termination, had not been before the Administrator for investigation. Therefore, the ALJ concluded that under the ARB's interpretation of 20 C.F.R. § 655.820 (governing when parties may request a hearing before an ALJ),¹⁴ she did not have jurisdiction to address the claim. Accordingly, the ALJ granted the University's motion for summary decision and dismissed Puri's request for hearing.

On appeal to the ARB, Puri challenges the ALJ's conclusion that she did not have jurisdiction to entertain Puri's claim for wages beyond July 27, 2007.

JURISDICTION AND STANDARD OF REVIEW

The Administrative Review Board (ARB) has jurisdiction to review the ALJ's decision.¹⁵ 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"¹⁶ The ARB has plenary power to review an ALJ's factual and legal conclusions de novo.¹⁷ 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." 29 C.F.R. § 18.40(d) (2011). Accordingly, the Board will affirm an ALJ's recommendation that summary decision be granted if, upon review of the evidence

¹³ As the ALJ noted, the parties had resolved the issues related to the proper amount of back wage owed by the time of the September 14, 2009 Decision and Order (D. & O.) (*see* D. & O. at n.4), and Puri's demands for the assessment of civil money penalties and the University's debarment from the H-1B program were no longer in contention (D. & O. at n.6).

¹⁴ *See Watson v. Electronic Data Sys. Corp.*, ARB Nos. 04-023, -029, -050 (ARB May 31, 2005).

¹⁵ 8 U.S.C.A. § 1182(n)(2); 20 C.F.R. § 655.845. *See* Secretary's Order No. 1-2010, 75 Fed. Reg. 3,924-25 (Jan. 15, 2010) (delegating to the ARB the Secretary's authority to review cases arising under, inter alia, the INA).

¹⁶ 5 U.S.C.A. § 557(b) (West 1996).

¹⁷ *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).

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.¹⁸

DISCUSSION

1. Regulatory Scheme

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.¹⁹ These workers are commonly referred to as H-1B non-immigrants. Specialty occupations require specialized knowledge and a degree in the specific specialty.²⁰ An employer seeking to hire an H-1B worker must obtain DOL certification by filing a Labor Condition Application (LCA).²¹ The LCA stipulates the wage levels and working conditions that the employer guarantees for the H-1B nonimmigrant.²² After securing the certification from the Department of Labor, and upon approval by the Department of Homeland Security, the Department of State issues H-1B visas to these workers.²³

In signing and filing an LCA, an employer attests that for the entire “period of authorized employment,” it will pay the wages as required under 20 C.F.R. § 655.731 to the H-1B nonimmigrant.²⁴ When there is an allegation that an H-1B employer has violated any of the provisions of 20 C.F.R. § 655.805(a), the Administrator is afforded broad authority to investigate and determine whether the employer has violated any provision of the regulations.²⁵

¹⁸ *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).

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

²⁰ 8 U.S.C.A. § 1184(i)(1).

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

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

²³ 20 C.F.R. § 655.705(a), (b).

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

²⁵ Violations include, among other things, where the H-1B employer has (1) “filed a labor condition application with ETA which misrepresents a material fact . . .”; (2) “failed to pay wages (including benefits provided as compensation for services) as required under § 655.731 (including payment of wages for certain nonproductive time); and (3) “required or accepted from an H-1B nonimmigrant payment or remittance of the additional \$500/\$1000

The provisions of 20 C.F.R. § 655.806(a) govern the filing of a complaint with the Administrator alleging a violation of 20 C.F.R. § 655.805(a).²⁶ Under 20 C.F.R. § 655.806(a)(1), the complaint can be either in writing or verbal, and if verbal, the Administrator must reduce the complaint to writing. The complaint process and the pre-conditions for investigation by the Administrator are set out in 20 C.F.R. § 655.806(a)(2), which reads:

The complaint shall 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. This determination shall be made within 10 days of the date that the complaint is received by a Wage and Hour Division official. 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. No hearing or appeal pursuant to this subpart shall be available where the Administrator determines that an investigation on a complaint is not warranted.

Section 655.806(a)(3) further provides:

If the Administrator determines that an investigation on a complaint is warranted, the complaint shall be accepted for filing; an investigation shall be conducted and a determination issued within 30 calendar days of the date of filing. . . . No hearing or appeal pursuant to this subsection shall be available regarding the Administrator's determination that an investigation on a complaint is warranted.

Where the Administrator finds that an employer has failed to pay wages or provide benefits in violation of the INA regulations, the Administrator shall assess and oversee the payment of back wages or benefits to the H-1B non-immigrant who has not been properly compensated.²⁷ The Administrator may also assess civil money penalties and seek to have the employer disqualified from further H-1B participation.²⁸

fee incurred in filing an H-1B petition with the DHS, as prohibited by § 655.731(c)(10)(ii).”
20 C.F.R. § 655.805(a).

²⁶ See also 8 U.S.C.A. § 1182(n)(2)(A).

²⁷ 20 C.F.R. § 655.810(a).

Any interested party may request a hearing before a Department of Labor administrative law judge to review an Administrator's determination.²⁹ Under the INA regulations, a hearing may be requested "where the Administrator determines after investigation, that there is no basis for finding that an employer has committed violation(s)," or "where the Administrator determines, after investigation, that the employer has committed violation(s)."³⁰

2. The ALJ erred in declining to exercise authority to hear Puri's claim

The ALJ held that she was without jurisdiction to review Puri's claim for wages beyond the period for which the University paid him. Based on the administrative record before her, the ALJ concluded that the Administrator did not investigate Puri's claim for wages beyond June 30, 2007. The ALJ held, "In the absence of any evidence that this issue was investigated by the Administrator, which is a prerequisite to a hearing, the Respondent is entitled to summary decision as there is no jurisdiction to review claims that have not been investigated and made the subject of a determination by the Administrator."³¹

Specifically, the ALJ focused upon whether Puri had raised the issue of his employment termination before the Administrator. The ALJ concluded that there was "simply no basis for a finding that the issue of whether the Respondent effected a bona fide termination of the Complainant in July 2007, and thus whether the Complainant was entitled to payment of wages until the Respondent did so, was before the Administrator, investigated by the Administrator, or subject to determination by the Administrator."³² Based on the fact that the bona fide nature of Puri's employment termination was not raised before the Administrator, and indeed could not have been raised or investigated since Puri's employment termination did not occur until after he filed his complaint, the ALJ found no basis existed upon which the Administrator could have interpreted Puri's claim for the payment of wages to extend beyond June 30, 2007.³³ Finding "absolutely nothing to even suggest that the Administrator had any notice of this issue," the ALJ

²⁸ See 20 C.F.R. § 655.810(b), (d).

²⁹ See 20 C.F.R. § 655.820(b).

³⁰ 20 C.F.R. § 655.820(b)(1), (2).

³¹ D. & O. at 7, citing *Watson*, ARB Nos. 04-023, -029, -050 and *Watson v. IBM Corp.*, ALJ No. 2006-LCA-031 (ALJ Oct. 3, 2006).

³² *Id.* at 8.

³³ *Id.*

concluded that “[c]learly, the Administrator did not have this claim before her, nor did she have the opportunity to investigate it or issue a determination on the Complainant’s claim for wages after June 30, 2007.”³⁴

In evaluating whether or not she had jurisdiction over Puri’s claim for wages beyond June 30, 2007, the ALJ erred as follows: (1) In concluding that Puri did not seek payment of wages beyond June 30th before the Administrator, the ALJ erroneously focused on the fact that the date of Puri’s employment termination was not contested before the Administrator; (2) The ALJ erred in focusing on whether the Administrator investigated Puri’s *claim* for the payment of wages beyond June 30th, whereas the proper focus is on whether the Administrator investigated Puri’s *complaint*; and (3) In the absence of notice by the Administrator pursuant to 20 C.F.R. § 655.806(a)(2) that any particular claim contained in Puri’s complaint failed to present reasonable cause for investigation, the presumption is that his entire complaint was investigated.

A. Puri’s complaint included a claim for payment of wages through the end of his LCA

An employer is obligated to pay wages to which it has committed for the LCA’s entire “period of authorized employment,”³⁵ unless circumstances exist where payment need not be made such as where the employer effects a “bona fide termination” of the employment relationship before the authorized employment period ends.³⁶ In reaching her conclusion that the administrative record contained no evidence that Wage and Hour investigated Puri’s complaint for ongoing wages, the ALJ focused on the lack of any challenge by Puri to the University’s decision in July of 2007 to terminate his employment. Termination of employment is, however, a defense to a claim for the payment of wages for a prescribed H-1B LCA period.³⁷ Thus, as a defense to a claim for wages, it is the obligation of the employer to raise the issue. Where a complaint for wages for the entire LCA period of authorized employment has been filed with the Administrator and rejected in whole or in part, the fact that the employer did not raise the termination-of-employment defense and that it was otherwise not before the

³⁴ *Id.* at 9.

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

³⁶ *Yongmahapakorn*, ARB No. 04-087, ALJ No. 2004-LCA-006, slip op. at 10-12 (ARB Sept. 29, 2006). *See* 20 C.F.R. § 655.731(c)(7)(ii) (setting forth INA requirements for a bona fide termination of the employment relationship).

³⁷ *See e.g., Yongmahapakorn v. Amtel Group of Florida, Inc.*, ALJ No. 2004-LCA-006, slip op. at 28 (ALJ March 23, 2004) (“because Respondent [employer] failed to establish a valid basis for termination, I also find that there has not been any bona fide termination”).

Administrator is of no relevance to the question of whether the ALJ has jurisdiction to review the Administrator's determination.³⁸

Instead, the proper focus should be on the nature and content of the employee's complaint, as supplemented by Wage and Hour's investigatory interviews. Puri's complaint, as supplemented by his interviews, demonstrates that Puri was not merely seeking the payment of back wages that were owed. His complaint alleges that since March 5, 2007, the University had refused to pay him wages and benefits to which he was entitled, and that the University's refusal to do so was in violation of H-1B rules and regulations because he had not as yet "been finally terminated through immigration." In Puri's initial interview, on June 26, 2007, Puri again indicated that his H-1B visa status had not as yet been terminated by the hospital and that "according to my H-1B visa my employment status with the hospital (noted on the LCA) was to expire 6/30/2009." Finally, in Puri's second Wage and Hour interview, on July 19, 2007, Puri mentioned that he had rejected the University's attempt to settle his complaint by paying him for those back wages that it determined he was owed. Given the content of Puri's complaint and his statements to the investigator, it is clear that Puri's complaint embodied a claim for all wages owed up through and including July 1, 2009, when his LCA period expired.

B. A claim contained in a complaint filed with Wage and Hour is subject to hearing before an ALJ unless the Administrator determines that there is no reasonable cause for investigation of the claim

The ALJ also focused on whether the Administrator investigated Puri's *claim* for the payment of wages beyond June 30th, citing *Watson, supra* in support of the legal proposition that "there is no jurisdiction to review claims that have not been investigated and made the subject of a determination by the Administrator."³⁹ On appeal, the University cites in further support of the ALJ's decision the ARB's more recent decision in *Jain v. Empower IT, Inc.*,⁴⁰ in which the Board likewise cited *Watson* in holding that "the prerequisite for requesting a hearing on a claim is that the Administrator has conducted an investigation and made a determination on that claim."⁴¹ The ALJ's interpretation of the jurisdictional prerequisite is nevertheless unsustainable because its overly narrow focus on whether specific "claims" were investigated, like the ARB's narrow focus in *Jain*, ignores the plain language of the H-1B regulations and is not supported by the ARB's holding in *Watson*.

As the Board discussed in *Watson*, 8 U.S.C.A. § 1182(n)(2)(A) provides for the establishment of an administrative process for the receipt, investigation and disposition of

³⁹ *Id.* at 7.

⁴⁰ ARB No. 08-077, ALJ No. 2008-LCA-008 (ARB Oct. 30, 2009).

⁴¹ *Jain*, ARB No. 08-077, slip op. at 9.

complaints alleging an employer's non-compliance with an LCA. Upon the filing of a complaint, the Secretary of Labor is required to make a determination as to whether a reasonable basis exists for determining that a violation has occurred. "If the Secretary determines that such a reasonable basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing *on the complaint*, in accordance with section 556 of Title 5."⁴²

20 C.F.R. § 655.806 provides additional detail to the administrative framework for the filing and investigation of a complaint filed by an aggrieved party. As the ARB held in *Watson*, under the H-1B implementing regulations, the employee's *complaint* must be investigated by the Administrator as a precondition to ALJ review. The regulations provide, "No hearing or appeal . . . shall be available where the Administrator determines that an investigation *on a complaint* is not warranted."⁴³ The ARB construed this provision to mean that "unless the Administrator finds that the facts presented in a complaint establish a reasonable cause for WHD to investigate, there will be no investigation and, therefore, no determination will issue."⁴⁴ The regulations further provide that where, on the other hand, the Administrator "determines that an investigation *on a complaint* is warranted,"⁴⁵ the Administrator's resulting decision, following investigation, is subject to review pursuant to 20 C.F.R. § 655.820. Simply put, "the prerequisite for requesting a hearing is that the WHD Administrator has conducted an investigation and made a determination" on the complaint.⁴⁶

The Board's decision in *Jain* cited *Watson* in support of its interpretation of the INA regulations as requiring an investigation of each specific claim of violation for an ALJ to assert jurisdiction upon a request for hearing.⁴⁷ However, there is nothing in *Watson* requiring an investigation by the Administrator of each and every claim of which a complaint may be comprised as a jurisdictional prerequisite to hearing before an ALJ. Rather, consistent with the express language of 8 U.S.C.A. § 1182(n)(2) and the INA implementing regulations that focus on the filing and investigation of "complaints," the Board in *Watson* affirmed the dismissal of four separate *complaints* that had been filed since "in all four complaints, the Administrator declined to investigate."⁴⁸ *Watson*, on its

⁴² 8 U.S.C.A. § 1182(n)(2)(B) (emphasis added).

⁴³ 20 C.F.R. § 655.806(a)(2) (emphasis added).

⁴⁴ *Watson*, ARB Nos. 04-023, -029, -050, slip op. at 5.

⁴⁵ 20 C.F.R. § 655.806(a)(3) (emphasis added),

⁴⁶ *Watson*, ARB Nos. 04-023, -029, -050, slip op. at 5.

⁴⁷ *Jain*, ARB No. 08-077, slip op. at 9-10.

⁴⁸ *Watson*, ARB Nos. 04-023, -029, -050, slip op. at 6. *Accord Amtel Group of Florida, Inc. v. Yongmahapakorn*, ARB No. 04-087, ALJ No. 2004-LCA-006 (ARB Sept. 29, 2006)

face does not support the Board's decision in *Jain* because it focuses on the *complaint* rather than a *claim*, but to the extent the Board in *Watson* read *Jain* to compel the decision in *Jain*, this Board disagrees with that interpretation.⁴⁹ The ALJ's imposition in this case of the requirement that each specific claim be investigated before ALJ can hear it is thus unsustainable as a matter of law.⁵⁰

As previously noted, 20 C.F.R. § 655.806(a)(2) provides in relevant part: "No hearing or appeal pursuant to this subpart shall be available where the Administrator determines that an investigation on a complaint is not warranted." The regulation requires that the Administrator make this determination within ten days of the date Wage and Hour receives the complaint. Consequently, had the Administrator determined that there was no reasonable cause to investigate Puri's complaint; the Administrator was required to notify Puri of that determination and afford him an opportunity to submit additional information. Puri's complaint was filed on June 18, 2007. The record contains no evidence that the Administrator notified Puri that any of the claims contained

(Administrator's determination of one violation from among the several complainant alleged did not bar consideration of all allegations of violation before ALJ or upon appeal to ARB notwithstanding that Administrator did not address the claims for which Wage and Hour had not found violations).

⁴⁹ We find the Board's overly narrow focus in *Jain* unsustainable. Accordingly, we reject *Jain* as having any precedential force or effect on the question of an ALJ's jurisdictional authority to review a request for hearing filed pursuant to 20 C.F.R. § 655.820.

⁵⁰ Furthermore, imposing such a requirement would, in our estimation, constitute an unwarranted burden upon the Wage and Hour Administrator to review in detail each and every issue raised by an aggrieved party, make a determination with respect to each as to whether or not to investigate, and in every instance document with specificity the claims and issues raised and the administrative decision with respect to each. There does not appear to be an existing standard by which an administrative record before Wage and Hour is established detailing and explaining an Administrator's determination. Compare, for example, the Administrator's Determination Letter in this case, which required explanation by the Administrator pursuant to a Status Order issued by the ALJ (Administrator's Submission Pursuant to Status Order), with reliance upon the investigator's "H1B Narrative" for explanation of the basis for the Administrator's determination in *Jain*. Moreover, in practice ALJs have entertained review of all claims contained in an LCA complaint, regardless of whether Wage and Hour investigated and determined every specific claim contained therein. We discern no justifiable reason for departing from what has up until now been a far less rigorous examination at the administrative level that has nevertheless justified review before an ALJ of the entirety of an employee's complaint. *See, e.g., Mao v. Nassar*, ARB No. 06-121, ALJ No. 2005-LCA-036 (ARB Nov. 26, 2008) (Administrator's determination under review contained no explanation for conclusion that INA was not violated); *Huang v. Ultimo Software Solutions, Inc.*, ALJ No. 2008-LCA-011, slip op. at 12-13 (ALJ Dec. 17, 2008) (ALJ addressed retaliation issue not directly dealt with in Administrator's determination letter).

in his complaint lacked reasonable cause for investigation. We thus conclude that in the absence of notice by the Administrator pursuant to 20 C.F.R. § 655.806(a)(2) that any particular claim contained in Puri's complaint failed to present reasonable cause for investigation, the presumption is that the Administrator investigated his entire complaint. The ALJ therefore has the authority to review every claim contained in Puri's complaint.

CONCLUSION

For the reasons stated, we hold that the ALJ has authority under 20 C.F.R. § 655.820 to address Puri's request for hearing for the payment of wages up through and including the end of his H-1B LCA period. Under the INA and its implementing regulations, the University is liable to Puri for payment of all wages due him under the LCA's terms, unless the University establishes that it effected a "bona fide" termination of Puri's employment pursuant to 20 C.F.R. § 655.731(c)(7)(ii) or other circumstances where payment of wages for the entire LCA employment period need not be made. Accordingly, we **VACATE** the ALJ's Decision and Order, and we **REMAND** this case to the Office of Administrative Law Judges for further proceedings consistent with this opinion.

SO ORDERED.

JOANNE ROYCE
Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge