



IN THE MATTER OF:

MAKARAND BIDWAI,

ARB CASE NO. 12-072

PROSECUTING PARTY,

ALJ CASE NO. 2011-LCA-029

v.

DATE: October 11, 2012

BOARD OF EDUCATION OF PRINCE
GEORGE'S COUNTY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Makarand Bidwai, *pro se*, Alexandria, Virginia

For the Respondent:

Mary E. Pivec, *Williams Mullen*, Washington, District of Columbia

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge*

FINAL DECISION AND ORDER DISMISSING APPEAL

The Administrative Review Board received a Petition for Review on July 13, 2012 (followed by a number of amending and addendum documents) from Makarand Bidwai, the Prosecuting Party, requesting the Board to review a Department of Labor Administrative Law Judge's Order Denying Prosecuting Party's Motion to Compel

Discovery and Motion to Establish Adverse Action, and Granting Respondent's Motion for Summary Decision (April 26, 2012); Order Denying Motion for Recusal, Denying Motion for Reconsideration, and Denying Motion to Augment Complaint (June 15, 2012); and Order Denying Prosecuting Party's Second Motion to Recuse, Reconsider, and Reinstate Complaint (June 27, 2012) in this case arising under the Immigration and Nationality Act, as amended.¹ On August 2, 2012, the Board filed a Notice of Intent to Review specifying the issues it would review on appeal² and establishing the briefing schedule. Under the terms of the briefing schedule, Bidwai's opening brief was due on or before September 10, 2012. The Board cautioned Bidwai that should he fail to file his brief by the due date, the Board could dismiss his appeal. Bidwai did not timely file his brief as ordered.

Instead, on September 7, 2012, the last business day preceding the date on which his brief was due, Bidwai filed a Motion to Hold Proceedings in Abeyance to Prevent Either a Prosecution Failure or a Foreclosure of Prosecuting Party's Claims Till [sic] Resolution of his Immigration Status. The Respondent, Prince George's County School Board, filed an opposition to this motion.

The basis for Bidwai's motion was not entirely clear, but it appeared that he was arguing that because of his current immigration status he might not be able to fully litigate his complaint should the Board decide to remand his case to the Administrative Law Judge for further consideration. It was also not entirely clear from Bidwai's filings whether he was appealing Judge Johnson's refusal to certify his U-Visa application, Chief Judge Purcell's refusal to certify his U-Visa application, or he was requesting the Board, in the first instance, to certify the U-Visa application or to make a deferred attestation application, or all of the above. In any event, the Board denied Bidwai's motion. We explained that to the extent he was appealing Judge Johnson's decisions denying the U-Visa certification, it would not be appropriate to suspend the briefing schedule until a decision is made because the parties have not yet briefed the issue. Further, we stated that to the extent Bidwai is requesting de novo consideration by the Board, this issue is completely separate from the question on the merits and holding the briefing in abeyance would serve no purpose other than to prolong the litigation in this case and forestall the Board's decision on the merits, which outcome is the opposite of what Bidwai says that he wants – a speedy resolution of his complaint.

Because Bidwai failed to timely file his opening brief as ordered, the Respondent urged the Board to dismiss Bidwai's appeal as the Board cautioned Bidwai it could do if he did not timely file it. But because the dismissal of an appeal is a very harsh sanction,

¹ 8 U.S.C.A §§ 1101(a)(15)(H)(i)(b), 1182(n), 1184(c) (West 1999 & Thomson Reuters Supp. 2012) (INA). The Secretary of Labor has delegated her authority to issue final agency decisions in cases arising under the INA's H-1B provisions to the Administrative Review Board. *See* Secretary's Order No. 1-2010, 75 Fed. Reg. 3,924-25 (Jan. 15, 2010)

² *See* 20 C.F.R. § 655.845 (2011).

in an Order Denying Motion to Hold Proceedings in Abeyance issued September 17, 2012, we gave Bidwai one final chance to file his opening brief. We informed Bidwai that to be considered timely, Bidwai must file his brief on or before September 27, 2012. We cautioned Bidwai that no motion for reconsideration or any other relief would toll the running of this deadline.

Nevertheless, Bidwai failed to file his opening brief even after the Board gave him one last chance to do so and specifically warned him of the consequences should he fail to do so. Instead, he filed a 16-page Motion to Rescind the Briefing Schedule in an Order Denying Motion to Hold Proceedings in Abeyance of September 14, 2012. In it, he again stated his belief that the Board must hold the briefing schedule in abeyance and decide his U-Visa request to avoid a failure of prosecution. The Board had previously rejected this argument in its Order Denying Motion to Hold Proceedings in Abeyance.

DISCUSSION

The Board's authority to effectively manage its docket, including authority to require compliance with Board briefing orders, is necessary to "achieve orderly and expeditious disposition of cases."³ This Board has authority to issue sanctions, including dismissal, for a party's continued failure to comply with the Board's orders and briefing requirements.⁴ The Board recognizes that dismissal of an appeal for failure to file a brief is a very serious sanction and we do not take it lightly. However, the Board's continued attempts to explicitly explain the Board's policy to Bidwai and to give him ample opportunities to file a timely brief have been futile.

The Board specifically and explicitly warned Bidwai in both our Notice of Intent to Review and our Order Denying Motion to Hold Proceedings in Abeyance that we could dismiss his appeal if he failed to file a timely brief. We also expressly warned him

³ *Batton v. Ryan Int'l Airlines, Inc.*, ARB No. 11-085, ALJ No. 2009-AIR-029, slip op. at 2 (ARB Mar. 2, 2012) (quoting *Link v. Wabash*, 370 U.S. 626, 630-31 (1962)).

⁴ *Batton*, ARB No. 11-085, slip op. at 3; *Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-007 (ARB Mar. 19, 2003). See also *Ellison v. Washington Demilitarization Co.*, ARB No. 08-119, ALJ No. 2005-CAA-009 (ARB Mar. 16, 2009), *aff'd sub nom. Ellison v. U.S. Dep't of Labor*, 09-13054 (11th Cir. June 17, 2010); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-102, ALJ No. 2004-AIR-006 (ARB Dec. 30, 2004, Reissued Jan. 5, 2005), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-035, ALJ No. 2003-AIR-012 (ARB Sept. 28, 2004), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *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).

that the filing of a Motion to Reconsider or motion for any other relief would not toll the running of the deadline. Nevertheless, instead of filing an opening brief as ordered, in contravention of the Board's specific direction, he filed an additional motion to hold the briefing in abeyance.

CONCLUSION

Considering that Bidwai is proceeding in this appeal without representation by counsel, this Board has afforded him expansive latitude in achieving compliance with procedural requirements. This latitude, however, is not without bounds. Bidwai's persistent and contumacious refusal to comply with the Board's briefing order in light of our explicit warning to him of the consequences of his failure to comply warrants sanctions in this case. Accordingly, because Bidwai has failed to file an opening brief in conformance with the Board's Notice of Intent to Review, we **DISMISS** his appeal.⁵

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

LISA WILSON EDWARDS
Administrative Appeals Judge

⁵ Given the Board's dismissal of Bidwai's appeal, his request for a U-Visa or deferred attestation application, his Motion to Rescind the Briefing Schedule, the Respondent's Motion to Deny and Strike Prosecuting Party's Motion to Rescind the Revised Briefing Schedule, and the Motion to Amend the Notice of Intent to Review of August 2, 2012 are moot.