



**In the Matter of:**

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

**ARB CASE NO. 12-104**

**ALJ CASE NO 2012-LCA-015**

**PROSECUTING PARTY,**

**DATE: October 18, 2012**

**v.**

**ABACUSS SOFTWARE  
TECHNOLOGIES, LLC,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Prosecuting Party:*

**Paul L. Frieden, Esq.; William C. Lesser, Esq.; Jennifer S. Brand, Esq.; and M.  
Patricia Smith, *United States Department of Labor, Washington, District of  
Columbia***

*For the Respondent:*

**Ravi Padmanabhan, *Abacuss Software Technologies (pro se), Atlanta,  
Georgia***

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; and Luis A.  
Corchado, *Administrative Appeals Judge***

## **NOTICE OF CASE CLOSING FOR FAILURE TO FILE A TIMELY PETITION FOR REVIEW**

Pursuant to 20 C.F.R. § 655.845(a), a party desiring review of an Administrative Law Judge's decision and order under the H-1B non-immigrant worker provisions of the Immigration and Nationality Act, as amended<sup>1</sup> shall file a petition for review that is received by the Department of Labor's Administrative Review Board within 30 calendar days of the date of the decision and order.<sup>2</sup> The Administrative Law Judge (ALJ) issued his Decision and Order-Awarding Back Pay and Interest (D. & O.) in this case on July 24, 2012.<sup>3</sup> The Board did not receive a Petition for Review from any party in this case within 30 days of the date on which the ALJ issued his D. & O.

In response to a request for an extension of the filing deadline, on September 5, 2012, the Administrative Review Board granted the Respondent Abacus Software, Technologies, LLC an enlargement of time until September 22, 2012, in which to file its petition for review. The Board cautioned the Respondents that "barring proof of extraordinary circumstances precluding the filing of the Petition for Review no further enlargements of time will be granted."

The Respondent did not file its Petition for Review on September 22, 2012, as ordered. Instead, the Board received a request for a further enlargement of time until December 31, 2012, to file the Petition for Review. In support of this request, the Respondent averred that it has not had sufficient time to prepare its Petition, to possibly hire an attorney, and to obtain copies of the transcripts.

The Administrator of the Department of Labor's Wage and Hour Division filed an opposition to the Respondent's request. The Administrator argued that the reasons given for an additional three-month enlargement of time including "the magnitude of the appeal" and the "possible hiring of an attorney" were "not unknown to Respondent when making its initial request for additional time" and "do not constitute extraordinary circumstances precluding the filing of the Petition for Review."

The Administrator further noted the "minimal regulatory requirements" of 20 C.F.R. § 655.845(a), (b)(3), and (b)(4) for submitting a Petition for Review that mandate

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<sup>1</sup> 8 U.S.C.A §§ 1101(a)(15)(H)(i)(b), 1182(n), 1184(c) (West 1999 & Thomson Reuters Supp. 2012) (INA).

<sup>2</sup> See also Secretary's Order No. 1-2010, 75 Fed. Reg. 3,924-25 (Jan. 15, 2010)(Secretary of Labor's delegation of authority to the Administrative Review Board to issue final agency decisions in cases arising under the INA's H-1B provisions).

<sup>3</sup> Administrator, Wage & Hour Div., U.S. Dep't of Labor v. Abacus Software Techs., LLC, ALJ No. 2012-LHC-015 (July 24, 2012).

no particular form for the Petition and only require a statement of the issues that give rise to the Petition and the reason or reasons that the petitioning party believes the judge incorrectly decided the case. The Administrator argued that the Respondent's reasons for needing more time to file its Petition for Review did not in any way prevent it from filing a timely Petition given these requirements. Finally, the Administrator states, "Any further delay will unfairly deprive timely payment to the H-1B workers of wages, benefits, and reimbursement for transportation costs that the ALJ found them entitled to."

We agreed with the Administrator that the Respondent had not demonstrated extraordinary circumstances precluding the filing of the Petition for Review. Accordingly, we denied the Respondent's motion for an enlargement until December 31, 2012, to file its Petition for Review. Nevertheless, because the denial of a right to file a Petition for Review is a most severe penalty, we afforded the Respondent one more opportunity to file its Petition and ordered it to file the Petition on or before October 10, 2012. We again cautioned the Respondent that if it failed to file its Petition by that date, the Board may dismiss this appeal without further notice.

The Respondent did not file its Petition by October 10, 2012. Instead it filed another request for an enlargement of time until December 31, 2012, proffering the same reasons for the enlargement that the Board had previously rejected. Accordingly, because the Respondent has failed to file a timely Petition for Review pursuant to 20 C.F.R. § 655.845(a), this case is **CLOSED**, and the ALJ's Decision and Order-Awarding Back Pay and Interest becomes the final decision and order of the Secretary of Labor in this case.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**