



In the Matter of:

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

ARB CASE NO. 15-082

ALJ CASE NO. 2015-LCA-010

PROSECUTING PARTY,

DATE: November 12, 2015

v.

E-BUSINESS INTERNATIONAL, INC.,

RESPONDENT.

SIDDHARTHA MAITY,

COMPLAINANT/PROSECUTING PARTY

v.

E-BUSINESS INTERNATIONAL, INC.,

RESPONDENTS,

and

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

PARTY-IN-INTEREST.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER DENYING APPEAL

On August, 17, 2015, the Administrative Review Board received a petition from Siddhartha Maity requesting the Board to review an Order Denying Complainant's Motion to Reopen Claim issued July 14, 2015, by a Department of Labor Administrative Law Judge (ALJ) under the Immigration and Nationality Act, as amended.¹ The ALJ had previously issued an Order Granting Respondent's Motion to Dismiss on March 24, 2015.² The H-1B regulations provide at 20 C.F.R. § 655.845(a) that a petitioner must serve a copy of the petition for review on all parties and on the administrative law judge. Maity's petition contained no certificate of service attesting to service on the parties and ALJ, so the Board could not ascertain whether Maity has fulfilled this requirement. Accordingly, on August 21, 2015, the Board ordered Maity to provide it with confirmation on or before September 1, 2015, that he had served all the parties and the ALJ with the petition for review. The Board cautioned Maity that if he failed to provide such confirmation in accordance with this order, the petition for review may be dismissed without further notice.

Maity failed to respond to the Board's August 21, 2015 Order to Provide Proof of Service. Accordingly, the Board ordered Maity to show cause no later than September 21, 2015, why the Board should not dismiss his petition for failure to respond to the Board's August 21, 2015 Order.

On September 16, 2015, Maity filed a response to the ARB's show cause order. In the response he indicated that he had not received the Board's Order to Provide Proof of Service and therefore had not responded to it. Upon investigation, it was confirmed that the Order to Provide Proof had not been loaded electronically and therefore was not available to Maity. Nevertheless, it was clear from Maity's response that he did not serve his petition for review on Respondent and its counsel. It also appeared that he had failed to serve them with his response to the show cause order.

¹ 8 U.S.C.A §§ 1101(a)(15)(H)(i)(b), 1182(n), 1184(c) (West 1999 & Thomson Reuters Supp. 2015) (INA).

² Pursuant to 20 C.F.R. §§ 655.840(a), 655.845(a), a party who wishes to appeal an Administrative Law Judge's decision must do so within 30 calendar days of the date on which the Judge issued it. If no petition for review is timely filed, the Judge's decision becomes the final decision of the Secretary of Labor. Maity filed no timely petition for review from either the ALJ's March 24, 2015 Order Granting Respondent's Motion to Dismiss, nor from the ALJ's July 14, 2015 Order Denying Complainant's Motion to Reopen Claim.

Accordingly on October 9, 2015, the Board issued a Second Order to Provide Proof of Service. This order stated,

To proceed with this case, Maity **must comply** with the regulations requiring service of the opposing party **and its counsel** with all documents that he files in this case. **Respondent's counsel is Patrick Palia, Esq.; Archer & Griener, P.C.; 21 Main Street; Suite 353; Court Plaza South, West Wing; Hackensack, NJ 07601. The FAX Number is 201-342-6611 and the telephone number is 201-342-6000.** Maity must attach a certificate of service with each document he files with the Board. This certificate is a statement by Maity that he has served the document on all required parties at the addresses listed on the certificate and must include the date on which the documents were served. The certificate must be signed by the person who has served the documents.^[3]

The Board's order further provided that "Given that Maity is residing in India, in addition to the Board, he is **only required to serve Respondent and his counsel**. Further, he may arrange with **counsel for Respondent to serve Respondent and his counsel by e-mail**. *Id.* (emphasis added). The Board gave Maity until October 23, 2015, to serve all documents that he has filed with the Board on the Respondent **and its counsel**. The Board further ordered him to provide the Board a certificate of service indicating that he has served the documents, how he has served them, and including the signature of the person who served the documents. *Id.* at 3.

The Board warned Maity, "If the Board does not receive a certification that Maity has served **Respondent and its counsel** with all of the documents he has filed with the Board on or before October 23, 2015, this case may be dismissed without further order. Furthermore, Maity is on notice that his failure to serve any additional documents that he may file with the Board on the Respondent and its counsel may result in dismissal." *Id.*

On October 19, 2015, Maity filed a certificate of service indicating that he had served all documents on Respondent by e-mail. But even after the Board made it clear that Maity was required to serve Respondent's counsel; supplied Maity with Respondent's counsel's name, address, fax number, and telephone number; and warned him of the consequences of failing to serve Respondent's counsel, he still has not filed a certificate of service with the Board demonstrating that he has complied with the Board's order, as the certificate filed did not include Respondent's counsel. Even given Maity's pro se status, the Board's patience is not inexhaustible. Accordingly, the Board issued a Third Order to Provide Proof of Service stating, "if the Board does not receive a

³ Second Order to Provide Proof of Service at 2 (Oct. 9, 2015)(emphasis added).

certificate of service demonstrating service of all documents Maity has filed in this case on Respondent's counsel by **November 5, 2015**, the Board will deny Maity's petition for review."

The Board has not received a Certificate of Service stating that Maity has served Respondent's counsel with all documents he has filed in this appeal. Accordingly, as the Board cautioned Maity in its October 29, 2015 Order, his appeal is **DENIED**.

FOR THE ADMINISTRATIVE REVIEW BOARD:

Janet R. Dunlop
General Counsel

**Note: Questions regarding any case pending before the Board should be directed to the Board's Paralegal Specialist, Juanetta Walker: Telephone: (202) 693-6200
Facsimile: (202) 693-6220**