



In the Matter of:

ADMINISTRATOR, WAGE AND  
HOUR DIVISION,

ARB CASE NOS. 2019-0081  
2020-0007

PROSECUTING PARTY,

ALJ CASE NO. 2018-LCA-00029

and

DATE:

NOV 27 2019

VIMALRAJ MANOHARAN,

PARTY-IN-INTEREST,

v.

HCL AMERICA, INCORPORATED,

RESPONDENT.

### NOTICE OF INTENT TO REVIEW AND BRIEFING SCHEDULE

This matter arises under the H-1B non-immigrant worker provisions of the Immigration and Nationality Act, as amended (INA).<sup>1</sup> On October 2, 2019, a Department of Labor Administrative Law Judge (ALJ) dismissed the case below because the Administrator, Wage and Hour Division (WHD), declined to further prosecute the complaint against Respondent. On October 10, 2019, the Board received a petition for review on from Vimalraj Manoharan, a party-in-interest in this matter, requesting the Board review that decision. The petition is hereby **GRANTED**, and the appeal is assigned ARB Case No. 2020-0007. The following issue will be reviewed:

WHETHER THE ALJ ERRED BY DISMISSING THE CLAIM BELOW, NOTWITHSTANDING THE REQUEST BY A PARTY-IN-INTEREST FOR A HEARING, BECAUSE THE PROSECUTING PARTY DECLINED TO PROSECUTE RESPONDENT FOR THE ENTIRETY OF THE AMOUNT CLAIMED BY THE PETITIONER.

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<sup>1</sup> 8 U.S.C. § 1101(a)(15)(H)(i)(b) (2014); *id.* § 1182(n) (2013); *id.* § 1184(c) (2015) (INA); 20 C.F.R. Part 655, subparts H and I (2018).

No other issues will be considered on this appeal.

Due to the nature of the issue raised by Petitioner's request, the Administrator, WHD is invited to file a brief or other statement of position as Amicus Curiae concerning its decision not to further prosecute Petitioner's claim regarding back wages. Any filing by the Administrator must be filed within 21 days of the date of issuance of this Order. Any responses by the parties to any filing by the WHD must be filed within 14 days of service of the Solicitor's brief.

The Party-in-Interest has filed another appeal in connection with the matter below, which had been previously accepted by the Board and designated as ARB Case No. 2019-0067. A filing by the Party-in-Interest relating to that appeal has been identified as an independent petition for review and designated ARB Case No. 2019-0081; that designation was in error, and that appeal is **ADMINISTRATIVELY DISMISSED**. In that both extant appeals arise out of Respondent's employment of the Party-in-Interest, ARB Case Nos. 2019-0067 and 2020-0007 are hereby **CONSOLIDATED** for purposes of appellate adjudication.

The Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (e-File) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

**PARTIES REPRESENTED BY COUNSEL MUST USE E-FILING  
ABSENT GOOD CAUSE SHOWN.**

An e-Filer must register as a user by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner.

e-Filers will also have access to electronic service (eService), which is simply a way to receive any documents issued by the Board through the Internet instead of mailing paper notices/documents. Information regarding registration for access to the EFSR system, as well as a step-by-step user guide and FAQs can be found at

<https://dol-appeals.entellitrak.com>. Please send any questions or comments to [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov).

Mail or deliver paper copies (if e-Filing is not used) of pleadings, including briefs, appendices, motion, and other supporting documentation to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5220, Washington, D.C., 20210.

**Within fourteen (14) days of the date of issuance of this Notice and Order, the Office of Administrative Law Judges will file with the Board with a copy of the transcript of proceedings in this matter, if any, and any original papers and exhibits filed by the parties and considered by the Administrative Law Judge while adjudicating this matter below. The presiding Administrative Law Judge or other appropriate official must certify as accurate and authentic a listing of all docket entries in the case below and file the certification with the transcript and other documents.**

**The briefing schedule in ARB Case No. 2019-0067 is complete. The following briefing schedule for ARB Case No. 2020-0007 is established:**

**OPENING BRIEF:** Within twenty-eight (28) days of the issuance of this Order, the petitioner must file with the Board a supporting legal brief of points and authorities.

**RESPONSE BRIEF:** An opposing party must file any response in opposition to the supporting legal brief with the Board within twenty-eight (28) calendar days from the date of the filing of the petitioner's opening brief. Any brief by the Administrator must also be filed by this deadline.

**REPLY BRIEF:** Within fourteen (14) calendar days of the filing of a response brief opposing the petitioner's opening brief, the petitioner may file a reply brief.

**ALL BRIEFS:** No further briefs may be filed without the permission of the Board. The party filing any brief must concurrently serve a copy of the brief upon the opposing party and file a certification of such service with the Board. Except as otherwise specified in this Order, the form of all briefs and other filings shall comply with Federal Rule of Appellate Procedure (FRAP) 32(a). The content of all briefs must comply to the extent practicable with FRAP 28.

## **OTHER FILINGS**

No appendix may be filed without prior permission of the Board and compliance to the extent practicable with FRAP 30. In no case may an appendix be filed earlier than twenty-one (21) days after the response brief is served. The form of any appendix must be consistent with FRAP 32(b).


All motions and other requests for extraordinary action by the Board (including, but not limited to, requests for extensions of time or expansion of page limitations) shall be in the form of a motion appropriately captioned, titled, formatted and signed, consistent with FRAP 27(d).

## **OTHER MATTERS**

**All pleadings should include the ARB case number as it appears in this Order.**

The Administrative Review Board encourages the parties to consider the alternative dispute resolution (ADR) program administered by the Office of Administrative Law Judges (OALJ). The OALJ offers two types of court-sponsored alternative dispute resolution: settlement judges and mediation services. If all parties agree to use the OALJ ADR program, they should jointly notify the Board of their intention, and the Chair of the Board will refer the matter to the Chief Administrative Law Judge for the limited purpose of appointing a mediator or settlement judge (other than a judge previously involved in the case). Unless the Chief Administrative Law Judge directs otherwise, settlement discussions must be completed within 56 days of the date of referral or the case will be automatically returned to the Board for the issuance of a new briefing schedule on the original grant of the petition for review. If the matter is settled, any agreement or consent findings will be reviewed and approved by the Board.

## **FOR THE ADMINISTRATIVE REVIEW BOARD:**

  
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**William T. Barto**  
**Chief Administrative Appeals Judge**

Note: Questions regarding any case pending before the Board should be directed to the Board's staff: Telephone: (202) 693-6200; Facsimile: (202) 693-6220.