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Issue Date: 29 July 2004

Case No.: 2004-LCA-13

In the Matter of:

LINA SUSAN INNAWALLI,
Prosecuting Party

vs.

AMERICAN INFORMATION TECHNOLOGY CORPORATION,
Respondent

APPEARANCES:

LINA SUSAN INNAWALLI, PRO SE
On Behalf of the Prosecuting Party

ALBERT D. HAMMACK, ESQ.
On Behalf of the Respondent

BEFORE: RICHARD D. MILLS
Administrative Law Judge

DECISION AND ORDER

This claim arises under the Immigration and Nationality Act, as amended by the Immigration Act of 1990 and 1991, 8 U.S.C. §§ 1101(a)(15)(H)(i)(b), 1182(n), and 1184(c) (hereinafter “INA” or “the Act”), and the regulations promulgated thereunder at 20 C.F.R. Part 655, Subparts H and I (hereinafter “the Regulations”). The claim is brought by Lina Susan Innawalli (formerly known as Lina Susan Verghese) against American Information Technology Corporation (“AITC”). Ms. Innawalli asserts that she is owed back pay and other damages as a result of INA H-1B visa program violations committed against her by AITC. AITC contends that it terminated Ms. Innawalli in April 2002 and that it has not committed any violations of the INA H-1B visa program. A hearing was held on April 27, 2004, via videoconference between Mumbai (Bombay),

India and Dallas, Texas. During the hearing, the parties were given the opportunity to offer testimony, documentary evidence, and to make oral argument. The following exhibits were admitted into evidence:¹

- 1) Court Exhibits Nos. 1-2;
- 2) Prosecuting Party Exhibits A, B, C, D, E, F, G, H, I²; and
- 3) Respondent Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P1-P2, Q, R, S, T, U, V1-V6.³

This decision is being rendered after giving full consideration to the entire record.

I. Procedural History

On January 6, 2004, the United States Department of Labor – Employment Standards Administration, Wage and Hour Division (“WHD”) issued its findings regarding an investigation of AITC under the H-1B provisions of the INA. CTX-1. The WHD determined that AITC had not violated the INA. CTX-1. On January 21, 2004, Ms. Innawalli filed a request for hearing with this Office for review of the WHD’s determination. CTX-2. Ms. Innawalli disputed AITC’s contention that she had been terminated by AITC in April 2002, asserting that she never received a termination letter from AITC and that she remained in continuing contact with AITC and its middle consultants through March 2003. CTX-2.

II. Summary of the Case

A. Background

On March 25, 1999, AITC issued to Ms. Innawalli a conditional offer of employment as a Programmer Analyst, with a starting salary of \$48,000.00 per annum. PX-H, p. 13. On April 22, 1999, Ms. Innawalli and AITC consummated the offer of employment by executing AITC’s Standard Employment Agreement. RX-V, pp. 1-6. On April 29, 1999, AITC petitioned the United States Immigration and Naturalization

¹ The following abbreviations will be used in citations to the record: CTX – Court Exhibit; PX – Prosecuting Party’s Exhibit; RX – Respondent’s Exhibit; and TR – Transcript of the proceedings.

² In accordance with the Court’s order, Ms. Innawalli submitted post-hearing PX-H, p. 17. TR. 103. That document is admitted into evidence. Ms. Innawalli also submitted records post-hearing of her attorney’s fees and travel expenses in returning to India. Those records are admitted into evidence as PX-I. TR. 63-66.

³ Although the hearing transcript does not show that RX-A, B, C, H, K, N, O, T, and U were admitted into evidence, those exhibits were indeed admitted by the Court. TR. 180.

Service (“INS” or “USCIS”⁴) to obtain H-1B visa classification for Ms. Innawalli. PX-H, p. 9; RX-N. In October 1999, AITC was issued approval for an H-1B visa for Ms. Innawalli, effective from October 19, 1999 until April 14, 2002. PX-H, p. 9.

While an employee of AITC, Ms. Innawalli worked on projects for two clients. From January 2000 through August 2000, Ms. Innawalli worked as a programmer/analyst for Medical Systems Management, Inc. (“MSM”), in Wakefield, Massachusetts. PX-H, p. 10. Ms. Innawalli worked on the staff of Rose Marota, MSM’s Vice President of Development. PX-H, p. 10. Ms. Innawalli thereafter worked as a Senior Programmer/Analyst in New York for PepsiCo (“Pepsi”) for almost two years, ending on April 26, 2002. PX-H, p. 11. Ms. Innawalli worked under Hal Tague, Financial Applications IT Team Lead for IBM Global Services – PepsiCo Account. PX-H, p. 11.

On March 28, 2001, AITC issued to Ms. Innawalli a revised offer of employment as a Senior Staff Consultant with a salary of \$60,000.00 per year, effective March 15, 2001. PX-H, p. 12. On March 22, 2002, AITC applied to INS for an extension of Ms. Innawalli’s H-1B visa, which was ultimately approved in September 2002. PX-B, p. 1; PX-H, p. 6. AITC contends that Ms. Innawalli was terminated from its employment effective April 27, 2002, at which time AITC submitted a request to INS for withdrawal of Ms. Innawalli’s H-1B status. RX-D; RX-E; RX-F; RX-G. Ms. Innawalli contends that her employment with AITC was not terminated and that she consequently is owed back wages and other damages pursuant to the INA and Regulations.

B. Testimony and Evidence of Prosecuting Party

Ms. Innawalli testified that her project with Pepsi ended on April 26, 2002. TR. 29. Ms. Innawalli testified that she thereafter was asked by Shobana Balasundaram, AITC’s technical recruiter, to obtain certification in Cognos training. TR. 29. According to Ms. Innawalli, Ms. Balasundaram supplied her with a CD and Cognos training questions. TR. 29. Ms. Innawalli became certified in Cognos on July 29, 2002. TR. 30; PX-E, p. 1. Ms. Innawalli testified that AITC thereafter began marketing her Cognos certification to clients, as evidenced by an e-mail to Ms. Innawalli from Ms. Balasundaram on July 30, 2002, indicating that Ms. Innawalli was to update Ms. Innawalli’s resume to include the skills she acquired from Cognos and her Pepsi work. TR. 30; PX-E. Ms. Innawalli testified that she sent in an updated resume in response to AITC’s request. TR. 86. Ms. Innawalli explained that she remained an employee of AITC, but that AITC required her updated resume because AITC’s business was to place its employees on projects with AITC’s clients. TR. 86. Ms. Innawalli testified that she sent her resume to some companies after April 2002, but that the companies were all middle consultants of AITC. TR. 89.

⁴ USCIS, or United States Citizenship and Immigration Services, is the successor agency to the United States Immigration and Naturalization Service.

In August 2002, Ms. Innawalli received by mail an ETA Form 750, Application for Alien Employment Certification, from Kamlesh Tewary, AITC's lawyer. TR. 15-18; PX-A, pp. 1-8. Mr. Tewary requested that Ms. Innawalli complete, sign, and return the documents to his office. PX-A, p. 3. According to Ms. Innawalli, most of the information on the ETA 750 was completed by AITC prior to her receipt, including answers that indicated Ms. Innawalli was on H-1B visa status and that her employment with AITC continued until the "Present." TR. 19, 99; PX-A, pp. 4-7.

On March 22, 2002, prior to Ms. Innawalli's alleged termination, AITC filed a request with INS for an H-1B visa extension for Ms. Innawalli. PX-B, p. 1. On September 12, 2002, after Ms. Innawalli's alleged termination, Ms. Innawalli received an e-mail from Ms. Balasundaram. TR. 19-20; PX-B, p. 2. The e-mail contained only a subject line, which read "H1 is approved...:)" PX-B, p. 2.

Ms. Innawalli testified that she received a new health insurance card from AITC in May 2002. TR. 32. On May 3, 2002, Ms. Innawalli received two e-mails from Heather Hamann, an AITC employee, regarding changes in AITC's health insurance plan due to AITC's policy renewal with Principal Financial Group, the health insurance provider. TR. 32; PX-D, pp. 1-3. Ms. Hamann's e-mails were addressed to all employees of AITC. TR. 32; PX-D, pp. 1-3.

Ms. Innawalli testified that she attempted to use her health insurance card for a doctor's visit in August 2002. TR. 32. Ms. Innawalli testified that after receiving a bill for the doctor's visit, she contacted Principal Financial Group and learned that her insurance from AITC had expired in April 2002. TR. 32; PX-D, p. 1. Ms. Innawalli testified that she then contacted Ms. Balasundaram regarding the health insurance problem. TR. 32; PX-D, p. 1. Ms. Innawalli received an e-mail from Ms. Balasundaram on September 25, 2002, indicating, "Your Health Insurance [sic] has been cancelled, the same will be activated upon your starting to work on a project." TR. 32; PX-D, p. 1. Ms. Innawalli testified that, prior to Ms. Balasundaram's e-mail, Ms. Innawalli did not know her health insurance had been cancelled by AITC. TR. 32.

Later in the day on September 25, 2002, Ms. Balasundaram sent Ms. Innawalli another e-mail, indicating, "Please send the bill you received from Principal by fax, Ramki wants to see if he can do his best." TR. 33; PX-D, p. 4. Ms. Innawalli then faxed the bill and confirmed her fax through an e-mail to Ms. Balasundaram on September 27, 2002. TR. 33; PX-D, p. 4. Ms. Balasundaram then responded by e-mail on September 28, 2002, indicating that Ms. Balasundaram was mailing Ms. Innawalli a check for \$168.28. TR. 33-34; PX-D, p. 4.

On October 5, 2002, Ms. Innawalli received an e-mail from Ms. Balasundaram, addressed to all AITC employees, indicating that Ms. Balasundaram would be away for one month. TR. 34; PX-D, p. 6. The e-mail indicated that Bhaskar Ramamurthy, an AITC employee, would fill in for Ms. Balasundaram until Ms. Balasundaram's return. TR. 34; PX-D, p. 6.

On December 19, 2002, Ms. Innawalli received another e-mail from Ms. Balasundaram. TR. 35; PX-D, p. 7. Ms. Innawalli testified that the e-mail contained employment information that was to be placed in Ms. Innawalli's resume. TR. 35; PX-D, p. 7. According to Ms. Innawalli, the subject line, "Change this into PB/Oracle," was Ms. Balasundaram's instruction for Ms. Innawalli to format the employment information into PB/Oracle formatting for placement into Ms. Innawalli's resume. TR. 35; PX-D, p. 7.

Ms. Innawalli also submitted evidence regarding a set of e-mails between her and Bhaskar Ramamurthy in January 2003. On January 7, 2003, Ms. Innawalli received an e-mail from Mr. Ramamurthy, with the subject line "Test Mail." PX-D, p. 11. Ms. Innawalli replied to the e-mail the same day, indicating that her resume was attached. PX-D, p. 11. On January 8, 2003, Mr. Ramamurthy sent another e-mail to Ms. Innawalli, with the subject line, "Cognos Resume which I submitted for the Chicago position." PX-D, p. 11. On January 9, 2003, Ms. Innawalli replied to Mr. Ramamurthy's January 8th e-mail, requesting that Mr. Ramamurthy "send me the reference & comp name too (Atlanta).. please update the resume with the same." PX-D, p. 10. On January 10, 2003, Mr. Ramamurthy sent Ms. Innawalli the final e-mail, with the subject line "Client Details." PX-D, p. 10. In the e-mail, PX-D, p. 10, Mr. Ramamurthy indicated:

Client Name: Merial

Consultant who is working Vimal Nair (404) 428-9---

Ms. Innawalli next submitted evidence regarding an AITC "Employee Consent" document sent to her in January 2003 by Shobana Balasundaram. On January 8, 2003, Ms. Balasundaram sent an e-mail to Ms. Innawalli containing an attached copy of the Employee Consent document and directing Ms. Innawalli to sign and return the document before the end of the day. PX-D, p. 8. On January 20, 2003, Ms. Balasundaram sent Ms. Innawalli a second e-mail containing an attached copy of the Employee Consent document. TR. 35-36; PX-D, p. 13. The January 20th e-mail indicated that Ms. Innawalli should complete and sign the Employee Consent document and fax it back to AITC as soon as possible. PX-D, p. 13. Referring to the Employee Consent document, Ms. Balasundaram indicated, "it is important for us to have this in our records before any Interviews is [sic] arranged for you." PX-D, p. 13.

The Employee Consent document refers to the “Consultant,” *i.e.*, Ms. Innawalli in this case, as a “potential/current” employee of AITC. PX-D, p. 14. The Employee Consent indicates that it will be effective for one year from the date of execution. PX-D, p. 14. The Employee Consent requires that the Consultant acknowledge that information provided by the Consultant in consideration for providing services, including but not limited to resumes, interviews, and references, are true to the best of the Consultant’s knowledge and that the Consultant is not restricted by any employment or other agreement from providing services. PX-D, p. 14. The document also restricts the Consultant, during the term of the agreement and within one year after the termination of the agreement, from directly or indirectly soliciting, offering, or in any way providing services to companies with whom the Consultant had telephonic or e-mail contact through AITC, without prior consent from AITC. PX-D, p. 14. The Employee Consent then requires that the Consultant agree to confidentiality regarding information obtained through the Consultant’s relationship with AITC and AITC’s clients. PX-D, p. 14. Just above to the blanks for the Consultant’s signature and the date, the document reads, “As a potential/current Employee of American Information Technology Corp who will work on a Project after contractual agreement is complete between American Information Technology Corp and their Client, I understand and agree to my Obligations under this Agreement.” PX-D, p. 14.

Ms. Innawalli also testified about a set of e-mails between her and Vijay Khanna in January 2003. TR. 36-37. Ms. Innawalli testified that Mr. Khanna was a middle consultant who was working with AITC to arrange interviews for Ms. Innawalli. TR. 36-37; PX-D, pp. 15-17. In the first e-mail, dated January 7, 2003, Ms. Innawalli sent in her resume regarding a job posting on Monster.com. PX-D, pp. 16-17. On January 11, 2003, Mr. Khanna sent a reply to Ms. Innawalli, thanking Ms. Innawalli for her resume and inquiring further about Ms. Innawalli’s experience, availability, and salary requirement. PX-D, p. 16. On January 21, 2003, Ms. Innawalli sent a follow-up e-mail to Mr. Khanna, asking if he had “a chance to speak with my company AITC – 1888GO4- --- (toll free number) ext 101? I would appreciate if you would keep me posted.” PX-D, p. 15. On January 22, 2003, Mr. Khanna replied to Ms. Innawalli, “I had left a vm message with Bhaskar and am not sure if he got back to me – however [sic] – I had put you in for \$40/hr – can you check and confirm if that is ok.” PX-D, p. 15.

Ms. Innawalli testified that on February 6, 2003, she was sent by AITC to an interview with a middle client, Hall Kinion, for a Cognos Administrator position in New York City. TR. 20, 40-41. Ms. Innawalli testified that she made two cellular phone calls to Ashish Dhir, Ms. Innawalli’s Hall Kinion contact,⁵ in regards to the interview: one call upon her arrival in New York City for the interview and one call after the interview was completed. TR. 21; PX-A, p. 1. Ms. Innawalli testified that she also called AITC after

⁵ Although Hall Kinion is recorded in the hearing transcript as Holkinin, it is clear from Ms. Innawalli’s request for hearing that she attended an interview with Ms. Ashish Dhir, Senior Technical Recruiter at Hall Kinion. CTX-2.

the interview and spoke with Mr. Ramamurthy about the progress of the interview. TR. 22. Ms. Innawalli testified that her phone calls to Ms. Dhir and AITC about the interview are documented in Ms. Innawalli's cellular phone records. PX-C, p. 1.

Ms. Innawalli testified that she was living in Pennsylvania at the time of the February 6th New York City interview. TR. 23. Ms. Innawalli testified that AITC provided her reimbursement for \$49.00, for her expenses in traveling from Pennsylvania to New York City. TR. 23. Ms. Innawalli testified that, although she had expected a check, she was reimbursed in cash, in the denomination of two \$20 dollar bills, one \$5 dollar bill, and four \$1 dollar bills. TR. 24. Ms. Innawalli testified that such reimbursement is evidenced by an envelope mailed from AITC to her address in Bethlehem, Pennsylvania, postmarked February 14, 2003. TR. 23; PX-C, p. 2.

Ms. Innawalli testified that on February 3, 2003, prior to her New York City interview, she was sent false references via e-mail by Mr. Ramamurthy. TR. 40-41; PX-E, pp. 13-15. In his first e-mail, Mr. Ramamurthy indicates:

Ref. #1

Vimal Nair

He is working in Merial.

He would be your Project Lead in the Pepsi Project.

His contact information is 404-428-9---

Email is vimal_nair@-----.com.

Talk to him and make sure that you both are in sync.

Ref. #2.

Anu Chebrolu

She would your [sic] ref. for the project you did in MASS

Her number is 214-392-1---

Her email id is achebrolu@-----.com

Talk to her before forwarding the ref. to Ashish.

PX-E, p. 13. Ms. Innawalli testified that "Ashish" in the last line of Mr. Ramamurthy's e-mail referred to Ashish Dhir of Hall Kinion. TR. 20-21, 40-41. Mr. Ramamurthy's second e-mail contained the subject line, "One more Ref." PX-E, p. 15. Mr. Ramamurthy's second e-mail read:

Loony Vidas

He was your Project Manager in Pepsi. If needed, tell them he quit the Job [sic] in Pepsi and moved to Iowa for some personal reasons. Sometimes you were reporting to him in your project leads absence.

His email ID is lvidis@-----.com
His contact number is (319) 230-9---

Make sure you talk to him and discuss on any specifics so that everyone is in Sync [sic].

Call me if you have any questions.

PX-E, p. 15. Ms. Innawalli testified that Loony Vidas was not her Project Manager for her Pepsi work. TR. 41. According to Ms. Innawalli, she was sent the false references in preparation for her interview with Ashish Dhir. TR. 20-21, 40-41; PX-E, p. 13. Ms. Innawalli explained that Mr. Ramamurthy was instructing Ms. Innawalli to tell Ms. Dhir that Loony Vidas had quit his Pepsi position for some reason and had moved to Iowa. TR. 41.

Ms. Innawalli testified that she continued to receive e-mails from middle consultants in February and March 2003. TR. 38; PX-D, pp. 29-36. Ms. Innawalli testified that in February 2003, she received a Vendor Consultant Presubmittal Agreement ("Vendor Agreement") from another middle consultant, identified only as "Joe." TR. 37. Ms. Innawalli testified that she objected to some provisions of the Vendor Agreement and forwarded the Vendor Agreement by e-mail to Kishore Munigety at AITC. TR. 37; PX-D, pp. 18-19. In the e-mail, Ms. Innawalli indicated, "I am sending you the .pdf file that Joe had sent me. As discussed over the phone some of the clauses mentioned in the file is [sic] not acceptable to me." PX-D, p. 18. Ms. Innawalli also testified about a March 12, 2003 e-mail she received from Mr. Ramamurthy. Mr. Ramamurthy's e-mail contained the subject line, "Please fill the skillset Matrix – Position in Albany." TR. 37-38; PX-D, pp. 20-21.

Ms. Innawalli also submitted evidence of an e-mail exchange between her and Mr. Chebrolu in March 2003. TR. 38. On March 26, 2003, Ms. Innawalli indicated to Mr. Chebrolu that she had tried calling Mr. Chebrolu and had left a couple of voicemails. PX-D, pp. 23-28. Ms. Innawalli further indicated that she needed to speak to Mr. Chebrolu and requested that he call her back at 808-941-7---. PX-D, pp. 23-28. On March 27, 2003, Mr. Chebrolu replied, "Hope Shobana was able to take care of the issue, if there is any." PX-D, pp. 23-28. On March 28, 2003, Ms. Innawalli replied, "I

appreciate your replying back to me. Shobana was not able to take care of the issue. I want to go on vacation to India and I require my extended H1-B [sic] approval notice along with the attached I-94, which is in your possession since the extension, and an employment letter for travel purpose. I would highly appreciate it if you could send these documents to me as soon as possible.” PX-D, pp. 23-28. On March 29, 2003, Ms. Innawalli sent another e-mail to Mr. Chebrolu, indicating, “I replied to your email yesterday and expected a response from you. I still have’nt [sic] received any response from you to my email as well as my voicemails. I would appreciate it if you would respond to me immediately.” PX-D, p. 27.

Ms. Innawalli testified that she resided in Hawaii with her future husband from May 2002 until September 2002, because she was unable to provide an apartment security deposit to continue living Connecticut. TR. 69, 75-76, 102. Ms. Innawalli testified that she was forced to move to Hawaii and live off her savings after AITC denied her accommodations. TR. 69, 75-76, 102. Ms. Innawalli testified that once she was able to arrange accommodations with friends in September 2002, she moved back to Connecticut. TR. 102. Ms. Innawalli testified that she subsequently had to move to Pennsylvania in January 2003. TR. 103. Ms. Innawalli testified that she was not aware of any requirement for her to notify USCIS of her changes in address, but that she notified AITC by telephone of such changes, as evidenced by AITC’s knowledge of her Bethlehem, Pennsylvania address. TR. 70-71, 101-02. Ms. Innawalli testified that she continuously worked for AITC by attending interview calls on behalf of AITC, even during her time in Hawaii. TR. 70, 99-100.

C. Testimony and Evidence of Respondent

Mr. Chebrolu testified that he is the President of AITC. TR. 106. Mr. Chebrolu testified that AITC recruited Ms. Innawalli in 1999 and that Ms. Innawalli signed an employment agreement with AITC on April 22, 1999. TR. 108-12; RX-V, p. 3. The employment agreement indicated that Ms. Innawalli was an at-will employee of AITC. TR. 108-12, 149, 155; RX-V, p. 3. In hand with the employment relationship, an H-1B visa was granted by INS for Ms. Innawalli, effective until April 14, 2002. TR. 108, 114. Mr. Chebrolu testified that Ms. Innawalli worked, as an employee of AITC, on projects with various AITC clients until April 2002. TR. 108. Mr. Chebrolu testified that AITC applied in March 2002 for an extension of Ms. Innawalli’s H-1B visa, because Ms. Innawalli’s visa was required for at least a couple more weeks. TR. 114-15.

Mr. Chebrolu testified that AITC sent a termination of employment letter, along with a COBRA health insurance information letter, to Ms. Innawalli on April 26, 2002. TR. 118; RX-E. The termination letter indicated that Ms. Innawalli’s termination was effective April 27, 2002, and offered payment to cover Ms. Innawalli’s travel expenses back to India. TR. 119-20, 157; RX-E. Mr. Chebrolu testified that Ms. Innawalli was terminated because her project ended and because she did not have the advance skills

necessary to handle further consulting work for AITC. TR. 139. Mr. Chebrolu testified that upon Ms. Innawalli's termination, AITC also sent a request to INS for the withdrawal of the H-1B extension application for Ms. Innawalli. TR. 115-18; RX-D. Mr. Chebrolu testified that AITC maintains a checklist concerning the termination of its H-1B employees and that Ms. Innawalli's termination was handled the same way as indicated in the checklist. TR. 123-24; RX-R.

Mr. Chebrolu testified that from May 2002 until the beginning months of 2003, Ms. Innawalli performed no services on behalf of AITC. TR. 137. Mr. Chebrolu testified that Ms. Innawalli's last pay period with AITC ended on April 26, 2002. TR. 128, 137. Mr. Chebrolu testified that Ms. Innawalli's last paycheck was processed in mid-May, because AITC's payroll was processed on two week delay. TR. 128, 148. According to Mr. Chebrolu, AITC payroll records indicate that Ms. Innawalli was listed as an employee during the payroll cycle of May 13, 2002, but not as an employee during the payroll cycle of May 28, 2002. TR. 128-30; RX-P, pp. 1-2. Mr. Chebrolu testified that the payroll records listed all of AITC's employees. TR. 177-79. However, Mr. Chebrolu acknowledged that Heather Hamann was an AITC employee and that Ms. Hamann was not listed in the payroll records. TR. 177-79; RX-P, pp. 1-2.

Mr. Chebrolu testified that Ms. Innawalli's health insurance was also cancelled, effective May 1, 2002. TR. 118. Mr. Chebrolu explained that the cancellation was not effective until May 1st because AITC conducted its health insurance cancellations on a monthly basis. TR. 118. Mr. Chebrolu acknowledged that Ms. Innawalli was nevertheless notified in May 2002 of changes in AITC's health insurance plan. TR. 114. Mr. Chebrolu explained that AITC employees were informed of the health coverage changes because AITC had renegotiated its health insurance plan effective for May 1, 2002. TR. 113. Mr. Chebrolu testified that due to ongoing negotiations with the insurance company, new insurance cards were issued to AITC employees based on AITC's list of employees as of April 2002. TR. 113.

Mr. Chebrolu testified that the termination and COBRA letters were sent on April 26, 2002, to Ms. Innawalli's last known address in Connecticut. TR. 118, 157-58; RX-E; RX-F. Mr. Chebrolu testified that he oversaw the mailing of these two documents. TR. 120. Mr. Chebrolu testified that AITC then received a letter from Ms. Innawalli, on or about May 14, 2002, stating that Ms. Innawalli was going on vacation for 10 weeks on a personal time-off basis. TR. 120, 158; RX-I; RX-J. Ms. Innawalli's letter was postmarked in Hawaii and the envelope listed a Hawaii return address for Ms. Innawalli. TR. 120-22. Mr. Chebrolu testified that AITC was not aware that Ms. Innawalli had moved to Hawaii and that AITC did not pay for Ms. Innawalli's travel expenses to Hawaii. TR. 122, 127, 163. Regarding Ms. Innawalli's time-off request, Mr. Chebrolu testified that he has never allowed an H-1B employee to take a vacation for ten weeks. TR. 126-27. Mr. Chebrolu testified that AITC also did not pay for the training alluded to by Ms. Innawalli in her Hawaii letter. TR. 126-27.

According to Mr. Chebrolu, AITC had no clue as to Ms. Innawalli's whereabouts from May 2002 through August 2002, because Ms. Innawalli did not notify AITC of her location, except for an e-mail address provided in her Hawaii letter and the Hawaii return mailing address which Mr. Chebrolu found to be enigmatic. TR. 127-28, 163. Mr. Chebrolu testified that since the beginning of her employment relationship with AITC, Ms. Innawalli has never contacted AITC about changing her residence address. TR. 136-37. Mr. Chebrolu testified that during Ms. Innawalli's employment, he was aware only of Ms. Innawalli's Connecticut address. TR. 119, 136-37. With respect to an envelope sent in February 2003 from AITC to Ms. Innawalli in Bethlehem, Pennsylvania, Mr. Chebrolu testified that Ms. Innawalli's Pennsylvania address must have been obtained after Ms. Innawalli notified someone at AITC. TR. 164.

Mr. Chebrolu testified that, fearing that Ms. Innawalli had not received the termination and COBRA letters sent to her Connecticut address, AITC sent a copy of those letters to the Hawaii address. TR. 122, 148, 157-61, 173-74. Mr. Chebrolu testified that he sent Ms. Innawalli's termination and COBRA letters to her in Hawaii by overnight mail, with the receipt submitted into evidence as RX-G. TR. 144; RX-G. The receipt indicates that the package was sent from AITC and addressed to Ms. Innawalli at a residence on Kahakai Dr. in Honolulu, HI 96814, with the phone number (808) 941-7---. RX-G. The receipt is signed "Shobana" and dated "05/31." RX-G. Mr. Chebrolu acknowledged that the receipt for the package to Hawaii does not prove that the package actually contained Ms. Innawalli's termination and COBRA letters. TR. 159. Mr. Chebrolu testified that neither of AITC's mailings to Connecticut and Hawaii was returned unreceived. TR. 122-23, 145, 158.

Mr. Chebrolu testified that Ms. Innawalli, after the time of her alleged termination, did not request a salary or question why her paychecks ended. TR. 149. However, Mr. Chebrolu acknowledged that Ms. Innawalli requested payment of a doctor's bill in September 2002. TR. 137-38; see PX-D, pp. 1-4. Mr. Chebrolu testified that although Ms. Innawalli was not covered under AITC's health insurance policy after her termination, he paid her doctor's bill in the amount of \$126.00. TR. 137-38. Mr. Chebrolu testified that he reluctantly helped Ms. Innawalli with the payment out of the goodness of his heart, because Ms. Innawalli had indicated to his staff that she was in financial trouble due to paying for medical care for her father. TR. 137-38, 169. Mr. Chebrolu testified that Ms. Innawalli again requested money a couple months later for medical expenses for a broken hand, but that he refused Ms. Innawalli's request. TR. 138.

Mr. Chebrolu acknowledged that in September 2002, the United States granted the H-1B extension for Ms. Innawalli that was requested by AITC in March 2002. TR. 145. According to Mr. Chebrolu, AITC responded to the extension approval by informing USCIS that the approval was a mistake and requesting that the H-1B extension be

revoked. TR. 145, 153-54; RX-K. Mr. Chebrolu testified that USCIS has been inconsistent in its processing of AITC's H-1B revocation requests. TR. 147-48, 153; RX-S. Mr. Chebrolu explained that many of AITC's requests for revocation have come back unanswered by INS/USCIS or that extension approvals have been granted despite outstanding requests for revocations. TR. 147-48, 153; RX-S. Mr. Chebrolu testified that he has not, through the date of the hearing, received any information from USCIS regarding the revocation of Ms. Innawalli's approved H-1B extension. TR. 150-53.

Mr. Chebrolu testified that AITC filed an ETA Form 750, Application for Alien Employment Certification, for Ms. Innawalli in July 2002. TR. 131; RX-L. Mr. Chebrolu signed the document on July 31, 2002. TR. 131; RX-L. Mr. Chebrolu explained that an H-1B visa application is for temporary U.S. employment while an Application for Alien Employment Certification is for permanent U.S. employment. TR. 132. Mr. Chebrolu testified that he has about 30 outstanding Applications for Alien Employment Certification for individuals who are not on AITC's payroll. TR. 165.

Mr. Chebrolu testified that both AITC and Ms. Innawalli were aware that processing of the Application for Alien Employment Certification takes three to four years. TR. 133. According to Mr. Chebrolu, in filing the ETA Form 750 in 2002, AITC hoped that Ms. Innawalli could become a permanent worker for AITC in 2005 or 2006. TR. 133. Mr. Chebrolu testified that AITC has since abandoned its Application for Alien Employment Certification for Ms. Innawalli. TR. 133. With respect to AITC's indication on its July 2002 ETA 750 that Ms. Innawalli was on H-1B status, Mr. Chebrolu testified that an applicant is responsible for maintaining his/her own status if the applicant is not an AITC employee. TR. 166.

Mr. Chebrolu testified that AITC never intends harm when terminating an employee and that AITC, even after terminating an employee, still cares about the employee's general welfare. TR. 138. Mr. Chebrolu testified that because AITC would like for good things to happen for its terminated employees, AITC helps its terminated employees with references and job guidance. TR. 138. Mr. Chebrolu testified that he never had any employer/employee relationship issues with Ms. Innawalli and that his staff was willing to help Ms. Innawalli with her resume and job search. TR. 133, 138-39. However, Mr. Chebrolu denied that AITC sent Ms. Innawalli on an interview with Hall Kinion. TR. 170-71. Mr. Chebrolu also denied knowledge of \$49.00 in cash being sent to Ms. Innawalli in Bethlehem, Pennsylvania. TR. 171.

Mr. Chebrolu testified that Ms. Innawalli contacted AITC by telephone in November 2002, requesting documentation of her employment with AITC, specifically her I-94 and AITC employment letter. TR. 140, 172. Mr. Chebrolu testified that Ms. Innawalli indicated she had another job offer and was requesting her AITC employment documentation in order to have her visa transferred to the new employer. TR. 140. Mr. Chebrolu testified that AITC refused to give Ms. Innawalli the documents because Ms.

Innawalli was no longer employed by AITC. TR. 140. Mr. Chebrolu testified that AITC knew Ms. Innawalli intended to use the documents to illegally obtain a visa transfer to a new employer. TR. 140-41, 172-73.

Mr. Chebrolu testified that he received a phone call regarding Ms. Innawalli from an INS officer in April 2003. TR. 139. Mr. Chebrolu testified that the INS officer asked about Ms. Innawalli's employment status with AITC. TR. 139-40. Mr. Chebrolu testified that he informed the INS officer that Ms. Innawalli had been terminated by AITC about one year earlier. TR. 140. According to Mr. Chebrolu, the INS officer then indicated that Ms. Innawalli would have to be deported for overstaying her visa. TR. 140.

III. Findings and Conclusions

The LCA Regulations require employers using an H-1B nonimmigrant to pay the H-1B nonimmigrant the required wage rate, cash in hand, free and clear, when due, except for deductions made in accordance with 20 C.F.R. § 655.731(c)(9). See 20 C.F.R. § 655.731(c)(1). For salaried employees, wages are due in prorated installments (e.g., annual salary divided into 26 bi-weekly pay periods, where employer pays bi-weekly) paid no less often than monthly. See 20 C.F.R. § 655.731(c)(4). The Regulations also provide:

If the H-1B nonimmigrant is not performing work and is in a nonproductive status due to a decision by the employer (e.g., because of lack of assigned work), lack of permit or license, or any other reason except as specified in paragraph (c)(7)(ii) of this section, the employer is required to pay the salaried employee the full pro-rata amount due...at the required wage for the occupation listed on the LCA.

20 C.F.R. § 655.731(c)(7)(i). The Regulations at 20 C.F.R. § 655.731(c)(7)(ii) state:

If an H-1B nonimmigrant experiences a period of nonproductive status due to conditions unrelated to employment which take the nonimmigrant away from his/her duties at his/her voluntary request and convenience (e.g., touring the U.S., caring for ill relative) or render the nonimmigrant unable to work (e.g., maternity leave, automobile accident which temporarily incapacitates the nonimmigrant), then the employer shall not be obligated to pay the required wage rate during that period, *provided that* such period is not subject to payment under the employer's benefit plan or other statutes such as the Family and Medical

Leave Act (29 U.S.C. 2601 *et seq.*) or the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*). Payment need not be made if there has been a *bona fide* termination of the employment relationship. INS regulations require the employer to notify the INS that the employment relationship has been terminated so that the petition is canceled (8 C.F.R. 214.2(h)(11)), and require the employer to provide the employee with payment for transportation home under certain circumstances (8 C.F.R. 214.2(h)(4)(iii)(E)).

In this case, there is no dispute that Ms. Innawalli's last project for AITC ended on April 26, 2002. The critical determination before the Court is whether or not there was a *bona fide* termination to the employment relationship between Ms. Innawalli and AITC after the end of Ms. Innawalli's last project. If there was a *bona fide* termination, then AITC was not required to continue paying Ms. Innawalli wages. See 20 C.F.R. § 655.731(c)(7)(ii). If there was no *bona fide* termination, then AITC was required to continue paying Ms. Innawalli wages pursuant to 20 C.F.R. § 655.731(c)(7)(i).

Because AITC's version of events is largely inconsistent with the evidence in the record while Ms. Innawalli's version of events is largely supported by the record, the Court finds that Ms. Innawalli's version of events is more credible in this case. Despite AITC's submission of termination letters that were allegedly sent to Ms. Innawalli and the INS in April and May 2002, AITC's actions from April 2002 through March 2003 demonstrate that no termination in fact took place.

First, Ms. Innawalli testified that she was asked by Shobana Balasundaram, AITC's technical recruiter, after the completion of Ms. Innawalli's Pepsi project on April 26, 2002, to obtain certification in Cognos training. TR. 29. Ms. Innawalli further testified that Ms. Balasundaram sent Cognos training materials to Ms. Innawalli following Ms. Innawalli's Pepsi project. TR. 29. Ms. Innawalli's testimony is consistent with a letter mailed by Ms. Innawalli to AITC on or about May 14, 2002. RX-I; RX-J. In the letter, which has the subject line "Notice of Personal Time-Off for Training – request," Ms. Innawalli indicates, "This is to let you know that I will be taking personal time off to upgrade/update my skills approximately for the next 10 weeks. Once I am ready to take up an assignment with American Information Technology Corporation, I will get in touch with you." RX-I. Despite Mr. Chebrolu's characterization of this letter as a request for vacation time, the letter clearly is a notice of time-off related to training. RX-I.

Ms. Innawalli's testimony regarding the Cognos training is also supported by a certificate issued to her on July 29, 2002, for certification in the Cognos Program. PX-E, p. 1. The timing of Ms. Innawalli's request in mid-May for 10 weeks off for training and Ms. Innawalli's July 29, 2002 Cognos certification is consistent with Ms. Innawalli's

testimony that she underwent Cognos training at AITC's request after the end of her last project on April 26, 2002. Both Ms. Innawalli's request for time-off for training and her completion of the Cognos training are inconsistent with Mr. Chebrolu's declaration that AITC verbally notified Ms. Innawalli of her termination two weeks before the end of her Pepsi project. See Respondent's April 26, 2004 letter to the Court, "Reply to the allegations being made by Ms. Innawalli" at p. 3. Likewise, Ms. Innawalli's completion of the Cognos training is inconsistent with AITC's contention that Ms. Innawalli was notified of her termination by mail at the end of May 2002 at the latest.

Second, AITC applied for an extension of Ms. Innawalli's H-1B visa on March 22, 2002. TR. 114-15; PX-B, p. 1. Mr. Chebrolu testified that AITC sent a request to withdraw Ms. Innawalli's H-1B status on April 26, 2002, at the time of Ms. Innawalli's alleged termination. TR. 115-18; RX-D. Nonetheless, Ms. Innawalli's extended H-1B visa was approved in September 2002. TR. 145. While Mr. Chebrolu explained that such mix-ups and delays sometimes occur with INS, the Court finds peculiar the fact that Ms. Innawalli was notified by AITC of the extension approval and AITC's manner of notification. Shobana Balasundaram sent Ms. Innawalli an e-mail on September 12, 2002, containing only the subject line, "H1 is approved....)". PX-B, p. 2.

Notifying Ms. Innawalli of the H-1B extension approval would have been senseless if Ms. Innawalli had been terminated by AITC in April 2002. In addition, the typewritten happy face at the end of the message is inconsistent with AITC's contention that the extension approval was a mistake and non-event. Furthermore, Mr. Chebrolu testified that a second revocation request was sent by AITC upon receipt of the H-1B extension approval. TR. 145, 153-54. However, at the time of the hearing, despite two alleged revocation requests by AITC and the passage of about 18 months after both requests had been submitted, Ms. Innawalli's H-1B extension still has not been revoked. TR. 150-53.

Third, in July 2002, AITC submitted an Application for Alien Employment Certification for Ms. Innawalli. TR. 131; RX-L. While the act of applying for alien employment certification is not itself inconsistent with AITC's contention that Ms. Innawalli was terminated in April 2002, two pieces of information entered by AITC on the application are inconsistent with AITC's contention that Ms. Innawalli was terminated. First, in the square for the alien's "Type of Visa (*If in U.S.*)," AITC entered "H-1B." PX-A, pp. 4, 6; RX-L. AITC's answer for Ms. Innawalli's type of visa is inconsistent with its contention that it requested a withdrawal from INS of Ms. Innawalli's H-1B visa upon her alleged termination in April 2002. RX-D. Notably, Mr. Chebrolu signed off to AITC's response regarding Ms. Innawalli's type of visa. RX-L, pp. 1-2. Second, with respect to the item for the month and year that Ms. Innawalli left her employment with AITC, AITC filled in "Present." TR. 19, 99; PX-A, p. 7. This answer is likewise inconsistent with AITC's contention that its employment relationship with Ms. Innawalli ended in April 2002.

Fourth, Ms. Innawalli testified that she first learned that her health insurance from AITC had expired when she attempted to use her health insurance card for a doctor's visit in August 2002. TR. 32. Ms. Innawalli testified that she then contacted Ms. Balasundaram regarding the problem. TR. 32; PX-D, p. 1. Ms. Innawalli received an e-mail from Ms. Balasundaram on September 25, 2002, indicating, "Your health insurance has been cancelled, *the same will be activated upon your starting to work on a project.*" TR. 32; PX-D, p. 1 (emphasis added). AITC's contention that its employment relationship with Ms. Innawalli ended in April 2002 is irreconcilable with Ms. Balasundaram's message in September 2002 that Ms. Innawalli's health coverage with AITC would be reinstated when Ms. Innawalli begins work on a project. If Ms. Innawalli's employment relationship with AITC had indeed been terminated, then there should be neither any reinstatement of AITC's health coverage for Ms. Innawalli nor any return to work by Ms. Innawalli on a project for AITC.

Furthermore, the doctor's visit in dispute was actually paid for by Mr. Chebrolu. TR. 33-34, 137-38; PX-D, p. 4. Mr. Chebrolu testified that personnel at AITC continued to help Ms. Innawalli after her alleged termination out of the goodness of their hearts. TR. 138-39, 169. However, based on the record as a whole and given Ms. Balasundaram's statement that Ms. Innawalli's health coverage would be reinstated upon her starting to work on a project, the Court finds that Mr. Chebrolu's payment for the bill is more consistent with Ms. Innawalli's contention that she continued to be employed by AITC on nonproductive status.

Fifth, Ms. Innawalli received e-mails from Ms. Balasundaram in January 2003, directing Ms. Innawalli to sign and return an attached AITC "Employee Consent" form. TR. 35-36; PX-D, pp. 8, 13. In a January 20, 2003 e-mail, Ms. Balasundaram indicates regarding the Employee Consent document, "The attached document is sent to you for your signature and filling up of relevant details and faxing it ASAP...*it is important for us to have this in our records before any Interviews is [sic] arranged for you.*" PX-D, p. 13 (emphasis added). The Employee Consent document refers to the "Consultant," *i.e.*, Ms. Innawalli in this case, as a "potential/current" employee of AITC. PX-D, p. 14. The Employee Consent indicates that it will be effective for one year from the date of its execution. PX-D, p. 14. The Employee Consent further requires that the Consultant acknowledge that information provided by the Consultant in consideration for providing services, including but not limited to resumes, interviews, and references, are true to the best of the Consultant's knowledge and that the Consultant is not restricted by any employment or other agreement from providing services. PX-D, p. 14. The document also restricts the Consultant, during the term of the agreement and for one year after the termination of the agreement, from directly or indirectly soliciting, offering, or in any way providing services to companies with whom the Consultant had telephonic or e-mail contact through AITC, without prior consent from AITC. PX-D, p. 14. The Employee Consent then requires that the Consultant agree to confidentiality regarding information

obtained through the Consultant's relationship with AITC and AITC's clients. PX-D, p. 14. Just above to the blanks for the Consultant's signature and the date, the document reads, "As a potential/current Employee of American Information Technology Corp who will work on a Project after contractual agreement is complete between American Information Technology Corp and their Client, I understand and agree to my Obligations under this Agreement."

The fact that AITC required Ms. Innawalli to sign and return the Employee Consent as soon as possible, before any interviews are arranged for Ms. Innawalli, contradicts AITC's contention that AITC personnel continued to help Ms. Innawalli search for a job after her termination out of the goodness of their hearts. Particularly inconsistent with AITC's contention are the provisions of the Employee Consent (1) referring to Ms. Innawalli as a "potential/current Employee of American Information Technology Corp who will work on a Project after contractual agreement is complete between American Information Technology Corp and their Client," (2) requiring Ms. Innawalli to acknowledge that she is not restricted by any employment or other agreement from providing services pursuant to the Employee Consent, and (3) restricting Ms. Innawalli for two years from the date of the Employee Consent from soliciting, offering, or providing services to contacts formed through AITC without AITC's prior consent. Requiring that Ms. Innawalli is not restricted in her ability to provide services due to an employment obligation or other agreement and contractually restricting Ms. Innawalli's ability to independently communicate and provide services to AITC contacts for two years would be nonsensical if AITC's assistance were truly intended for Ms. Innawalli to find a job that is independent of AITC. In addition, AITC's requirement that Ms. Innawalli execute the Employee Consent before any interviews are arranged for her suggests that the character of AITC's help with Ms. Innawalli's job search was not merely friend-helping-friend, but instead entailed a formal binding obligation from Ms. Innawalli to AITC.

Sixth, Mr. Chebrolu testified that Ms. Innawalli requested in November 2002 for AITC to provide her with her AITC employment and visa documents. TR. 140, 172. Mr. Chebrolu testified that Ms. Innawalli had received a job offer from another employer and wanted to transfer her visa over to the new employer. TR. 140. Mr. Chebrolu testified that he refused to turn over her documents because he knew Ms. Innawalli sought to use the documents for an illegal purpose. TR. 140-41, 172-73. The Court finds that Mr. Chebrolu's testimony is highly inconsistent with the actions of AITC before and after November 2002.

At least on one occasion between Ms. Innawalli's alleged termination and November 2002, AITC was involved in changing Ms. Innawalli's resume. PX-E, pp. 2-3. Mr. Chebrolu explained that AITC personnel continued to help Ms. Innawalli after her termination with finding a job, because AITC cares about the general welfare of its terminated employees. TR. 133, 138-39. However, Mr. Chebrolu's testimony that

AITC was helping Ms. Innawalli find a job is incompatible with his testimony that AITC then refused to help Ms. Innawalli finalize a job offer that she finally supposedly acquired. Given that Ms. Innawalli was in the United States on an H-1B visa with AITC, AITC should have known that Ms. Innawalli's alleged termination from AITC would have invalidated her basis for being in the United States, even before Ms. Innawalli's alleged documents request of November 2002. Therefore, if AITC had truly terminated Ms. Innawalli, it would be illogical for AITC to continue helping Ms. Innawalli find a job, especially when AITC supposedly refused to provide Ms. Innawalli's visa documents once she supposedly finally found a job.

Even giving AITC the benefit of the doubt that its help prior to November 2002 was provided somehow under the belief that Ms. Innawalli was properly in the United States after her alleged termination, Mr. Chebrolu's testimony regarding the November 2002 incident is irreconcilable with the fact that AITC continued to help Ms. Innawalli find a job after November 2002. In fact, most of the documentary evidence relating to AITC's involvement in Ms. Innawalli's job search happened after November 2002. For example, AITC sent Ms. Innawalli its Employee Consent document, along with the message that the document should be returned before interviews are arranged for Ms. Innawalli, in January 2003. PX-D, pp. 13-14. Other evidence of AITC's involvement in Ms. Innawalli's job search after November 2002 will be discussed on an individual basis below. Mr. Chebrolu's testimony regarding the alleged November 2002 incident is simply illogical, because his version of events would entail that AITC initially helped Ms. Innawalli find a job offer, then refused on legal grounds to help Ms. Innawalli finalize a job offer she received, and then resumed helping Ms. Innawalli with her job search despite having already recognized the legality issue.

Seventh, Ms. Innawalli submitted a set of e-mails between her and Bhaskar Ramamurthy that began January 7, 2003, and referenced Mr. Ramamurthy's submission of Ms. Innawalli's resume to a Chicago client. On January 8, 2003, Mr. Ramamurthy sent an e-mail to Ms. Innawalli, with the subject line, "Cognos Resume which I submitted for the Chicago position." PX-D, p. 11. On January 9, 2003, Ms. Innawalli replied to Mr. Ramamurthy's January 8th e-mail, requesting that Mr. Ramamurthy, "send me the reference & comp name too (atlanta).. please update the resume with the same." PX-D, p. 10. On January 10, 2003, Mr. Ramamurthy sent Ms. Innawalli another e-mail, with the subject line "Client Details." PX-D, p. 10. In the e-mail, Mr. Ramamurthy indicated:

Client Name: Merial

Consultant who is working Vimal Nair (404) 428-9---

This set of e-mails demonstrates to the Court that AITC submitted Ms. Innawalli's resume to at least one of its clients in Chicago in January 2003. The fact of this submission supports Ms. Innawalli's contention that AITC continued to seek out clients

for her after April 2002. In addition, as discussed above, Mr. Ramamurthy's submission of Ms. Innawalli's resume to the Chicago client is inconsistent with Mr. Chebrolu's testimony regarding the November 2002 incident.

Eighth, Ms. Innawalli was sent employment references by Mr. Ramamurthy via e-mail on February 3, 2003. TR. 40-41; PX-E, pp. 13-15. Ms. Innawalli testified that the references were false and were intended to help Ms. Innawalli secure an AITC client project. TR. 40-41; PX-E, pp. 13-15. In his first e-mail, Mr. Ramamurthy indicates:

Ref. #1

Vimal Nair

He is working in Merial.

He would be your Project Lead in the Pepsi Project.

His contact information is 404-428-9---

Email is vimal_nair@-----.com.

Talk to him and make sure that you both are in sync.

Ref. #2.

Anu Chebrolu

She would your [sic] ref. for the project you did in MASS

Her number is 214-392-1---

Her email id is ahebrolu@-----.com

Talk to her before forwarding the ref. to Ashish.

PX-E, p. 13. Ms. Innawalli testified that "Ashish" in the last line of Mr. Ramamurthy's e-mail referred to Ashish Dhir of Hall Kinion, the middle client of AITC with whom Ms. Innawalli interviewed in New York City on February 6, 2003. TR. 20-21, 40-41. Mr. Ramamurthy's second e-mail contained the subject line, "One more Ref." PX-E, p. 15. His second email read:

Loony Vidas

He was your Project Manager in pepsi. If needed, tell them he quit the Job [sic] in Pepsi and moved to Iowa for some personal reasons. Sometimes you were reporting to him in your project leads absence.

His email ID is lvidis@-----.com
His contact number is (319) 230-9---.

Make sure you talk to him and discuss on any specifics so that everyone is in Sync [sic].

Call me if you have any questions.

PX-E, p. 15. Ms. Innawalli's Team Leader for her Pepsi project was neither Vimal Nair nor Loony Vidas, but instead Hal Tague. TR. 41; PX-H, p. 11. In addition, Ms. Innawalli worked under Rose Marota during Ms. Innawalli's Massachusetts project. PX-H, p. 10.

According to Ms. Innawalli, she was sent the false references by Mr. Ramamurthy in preparation for her interview with Ashish Dhir. TR. 20-21, 40-41; PX-E, p. 13. Ms. Innawalli's testimony is consistent with Mr. Ramamurthy's reference to "Ashish" in the e-mails and the date of the e-mails in relation to Ms. Innawalli's interview with Ms. Dhir. In addition, Ms. Innawalli's evidence that she worked under different individuals during her Massachusetts and Pepsi projects makes Mr. Ramamurthy's references suspicious. Suspicion regarding AITC's version of events is furthered when considering the fact that any references were sent to Ms. Innawalli at all in January 2003, in light of Mr. Chebrolu's testimony about the supposed November 2002 incident.

Ninth, the Court is persuaded by Ms. Innawalli's testimony about her participation in an interview with Hall Kinion, on behalf of AITC, in February 2003. TR. 20, 40-41. As discussed above, Mr. Ramamurthy's reference to "Ashish" in his February 3, 2003 e-mail is consistent with Ms. Innawalli's testimony that she interviewed with Ashish Dhir of Hall Kinion on February 6, 2003. Ms. Innawalli also submitted cellular phone records to document that she made calls on February 6, 2003, to Ashish Dhir and AITC's offices. PX-C, p. 1. While the phone records do not show the names of the recipients of the calls or details about the conversations, the Court found Ms. Innawalli's testimony credible regarding the call recipients and conversations. In addition, Ms. Innawalli testified that she was living in Pennsylvania at the time of the Hall Kinion interview. TR. 23. Ms. Innawalli submitted an envelope sent to her in Pennsylvania by AITC, postmarked February 14, 2003. PX-C, p. 2. According to Ms. Innawalli the envelope contained \$49.00 cash for reimbursement of her travel expenses from Pennsylvania to New York City for the interview. TR. 23-24. While Mr. Chebrolu denied knowledge of the envelope, the timing of the mailing, about one week after the Hall Kinion interview, is consistent with Ms. Innawalli's testimony. Furthermore, the mere fact that AITC continued to send correspondence to Ms. Innawalli in February 2003, in light of Ms. Innawalli's alleged termination almost one year earlier and the alleged November 2002 exchange between Ms. Innawalli and AITC, is itself suspicious.

Tenth, Ms. Innawalli also submitted evidence of an e-mail exchange between her and Mr. Chebrolu in March 2003. TR. 38. On March 26, 2003, Ms. Innawalli indicated to Mr. Chebrolu that she had tried calling Mr. Chebrolu and had left a couple of voicemails. PX-D, pp. 23-28. Ms. Innawalli further indicated that she needed to speak to Mr. Chebrolu and requested that he call her back at 808-941-7---. PX-D, pp. 23-28. On March 27, 2003, Mr. Chebrolu replied, "Hope Shobana was able to take care of the issue, if there is any." PX-D, pp. 23-28. On March 28, 2003, Ms. Innawalli replied, "I appreciate your replying back to me. Shobana was not able to take care of the issue. I want to go on vacation to India and I require my extended H1-B [sic] approval notice along with the attached I-94, which is in your possession since the extension, and an employment letter for travel purpose. I would highly appreciate it if you could send these documents to me as soon as possible." PX-D, pp. 23-28. On March 29, 2003, Ms. Innawalli sent another e-mail to Mr. Chebrolu, indicating, "I replied to your email yesterday and expected a response from you. I still have'nt [sic] received any response from you to my email as well as my voicemails. I would appreciate it if you would respond to me immediately." PX-D, p. 27.

Neither Ms. Innawalli nor Mr. Chebrolu's messages contain any hint that there had been a previous problem in November 2002 regarding AITC's refusal to turn over Ms. Innawalli's employment documents and I-94. Ms. Innawalli's messages contain no mention or suggestion at all that AITC had previously withheld her employment and visa documents from her. Likewise, Ms. Innawalli's messages contain no intimation or implication that AITC is somehow improperly in possession of her visa materials, as one might expect if she believed she had been terminated about one year earlier.

Eleventh, Ms. Innawalli submitted into evidence a set of e-mails between her and Vijay Khanna in January 2003. TR. 36-37. Ms. Innawalli testified that Mr. Khanna was a middle consultant who was working with AITC to arrange interviews for Ms. Innawalli. TR. 36-37; PX-D, pp. 15-17. In the first e-mail, dated January 7, 2003, Ms. Innawalli sent in her resume regarding a job posting on Monster.com. PX-D, pp. 16-17. On January 11, 2003, Mr. Khanna sent a reply to Ms. Innawalli, thanking Ms. Innawalli for her resume and inquiring further about Ms. Innawalli's experience, availability, and salary requirement. PX-D, p. 16. On January 21, 2003, Ms. Innawalli sent a follow-up e-mail to Mr. Khanna, asking if he had "a chance to speak with my company AITC – 1888GO4---- (toll free number) ext 101? I would appreciate if you would keep me posted." PX-D, p. 15. On January 22, 2003, Mr. Khanna replied to Ms. Innawalli, "I had left a vm message with Bhaskar and am not sure if he got back to me – however [sic] – I had put you in for \$40/hr – can you check and confirm if that is ok." PX-D, p. 15.

Although these e-mails were not carbon copied to AITC, Ms. Innawalli clearly references AITC, which she refers to as "my company." These e-mails demonstrate to the Court that Ms. Innawalli clearly believed into January 2003 that she had an ongoing

employment relationship with AITC. The fact that Ms. Innawalli would direct a project contact to speak with AITC regarding her potential employment on the project shows that Ms. Innawalli's search for work was not separate and apart from her relationship with AITC. In addition, the fact that the project contact actually called AITC, namely Bhaskar Ramamurthy, for information regarding Ms. Innawalli's salary requirement further supports Ms. Innawalli's contention that her search for work was not autonomous, but instead was controlled by AITC.

Twelfth, Ms. Innawalli testified that she continued to receive e-mails from AITC middle consultants in February and March 2003. TR. 38; PX-D, pp. 29-36. Ms. Innawalli testified that in February 2003, she received a Vendor Consultant Presubmittal Agreement ("Vendor Agreement") from an AITC middle consultant, identified only as "Joe." TR. 37. Ms. Innawalli testified that she objected to some provisions of the Vendor Agreement and forwarded the Vendor Agreement by e-mail to Kishore Munigety at AITC. TR. 37; PX-D, pp. 18-19. In the e-mail, Ms. Innawalli indicated, "I am sending you the .pdf file that Joe had sent me. As discussed over the phone some of the clauses mentioned in the file is [sic] not acceptable to me." PX-D, p. 18. The fact that Ms. Innawalli would remedy her objections to the Vendor Agreement by sending the Vendor Agreement to AITC demonstrates to the Court that Ms. Innawalli relied in some way on AITC to clear up such disputes.

AITC contends that Ms. Innawalli's communications with middle consultants demonstrate that Ms. Innawalli was seeking work because she had been terminated from AITC. There is no merit in such a contention. The nature of Ms. Innawalli's employment relationship with AITC was that Ms. Innawalli was paid by AITC to be outsourced on projects for clients of AITC. TR. 108. For example, Ms. Innawalli's employment with AITC entailed Ms. Innawalli working on outside projects with MSM and Pepsi. TR. 108; PX-H, pp. 10-11. Therefore, the fact that Ms. Innawalli continued to seek out project contacts demonstrates no more that she was looking for a new employer than it does that she was looking for new projects to work on for AITC.

Thirteenth, Ms. Innawalli continued to receive communications from AITC personnel into March 2003. In addition to the communications already discussed above, Ms. Innawalli received an e-mail from Ms. Balasundaram in October 2002, addressed to all AITC employees and indicating that Ms. Balasundaram would be away for one month. TR. 34; PX-D, p. 6. The e-mail indicated that Bhaskar Ramamurthy would fill in for Ms. Balasundaram during her time away. PX-D, p. 6. The fact that Ms. Innawalli was sent this e-mail in October 2002, concerning the personnel operations at AITC, supports Ms. Innawalli's contention that her employment relationship with AITC had not been terminated in April 2002. Ms. Innawalli also received another e-mail from Ms. Balasundaram on December 19, 2002, containing information to be placed into Ms. Innawalli's resume. TR. 35; PX-D, p. 7. Finally, Ms. Innawalli received an e-mail from Mr. Ramamurthy on March 12, 2003, with the subject line, "Please fill the skillset Matrix

– Position in Albany.” TR. 37-38; PX-D, pp. 20-21. AITC’s contention that Ms. Innawalli was terminated from AITC in April 2002 is not consistent with AITC’s numerous communications with Ms. Innawalli into March 2003.

Fourteenth, the Court is not persuaded by AITC’s evidence of Ms. Innawalli’s termination, in light of the cumulative evidence presented by Ms. Innawalli to the contrary. According to Mr. Chebrolu, AITC had no clue as to Ms. Innawalli’s whereabouts from May 2002 through August 2002, because Ms. Innawalli did not notify AITC of her location, except for an e-mail address provided in Ms. Innawalli’s Hawaii letter and a return address listed on the envelope of the Hawaii letter. TR. 127-28, 163. Mr. Chebrolu testified that, fearing that Ms. Innawalli had not received the termination and COBRA letters sent to her Connecticut address, AITC sent a copy of those letters to the Hawaii address. TR. 122, 148, 157-61, 173-74. Mr. Chebrolu produced a courier’s receipt for the alleged Hawaii package. TR. 144; RX-G.

The Court first notes that there is no indication on the courier’s receipt of the actual contents of the package. TR. 159; RX-G. Given that Mr. Chebrolu’s testimony is inconsistent regarding AITC’s post-termination involvement with Ms. Innawalli in relation to the supposed November 2002 incident, the Court finds that Mr. Chebrolu’s testimony is not reliable to establish the contents of AITC’s Hawaii package. Likewise, there has been no action taken regarding AITC’s alleged letter to the INS requesting cancellation of Ms. Innawalli’s H-1B status. TR. 150-53; RX-D; RX-K. The Court will not rely solely upon Mr. Chebrolu’s testimony as proof that the INS letter was actually sent.

The Court finds that Ms. Innawalli, as evidenced by her communications into 2003 with AITC and middle consultants, believed into 2003 that she was an employee of AITC. Ms. Innawalli’s statements and actions after May 2002 would be nonsensical if she had actually received AITC’s alleged termination letter. Furthermore, the courier’s receipt lists a phone number for Ms. Innawalli at her Hawaii address. RX-G. AITC’s possession of the phone number suggests that Ms. Innawalli was in contact with AITC more than intimidated by Mr. Chebrolu.

AITC’s payroll records are also insufficient to establish that Ms. Innawalli was terminated in April 2002. RX-P. As evidenced by the exclusion of Heather Hamann, an AITC employee at the time, the payroll records do not list all of AITC’s employees. TR. 177-79; PX-D, pp. 1-3; RX-P, pp. 1-2. The payroll records at most show that Ms. Innawalli was not being paid by AITC after the April 26, 2002 pay period, a fact that is central to Ms. Innawalli’s dispute and uncontested by either party.

Based on the foregoing, the Court finds that the evidence as a whole is more consistent with Ms. Innawalli's version of events than AITC's version. As discussed above, the evidence shows collectively that Ms. Innawalli maintained an ongoing employment relationship with AITC for one year after her alleged termination.

Furthermore, even *assuming arguendo* that AITC did send Ms. Innawalli the termination letter, the Court finds that such termination was not a *bona fide* termination as is required in 20 C.F.R. § 655.731(c)(7)(ii). In LCA cases, the Office of Administrative Law Judges has defined the term "*bona fide*" based on its definition in Black's Law Dictionary. See Rajan v. International Business Solutions, Ltd., 2003-LCA-12, fn. 12 (ALJ April 30, 2003) (citing previous reliance by Department of Labor, Wage Appeals Board on definition of *bona fide* according to Black's Law Dictionary in In the Matter of Tom Mistick & Sons, Inc., WAB Case Nos. 88-25 & 88-26 (DOL W.A.B. May 30, 1991)); Yongmahapakorn v. Amtel Group of Florida, Inc., 2004-LCA-6 (ALJ Mar. 23, 2004). The definition of *bona fide* in Black's Law Dictionary is as follows: "1. Made in good faith; without fraud or deceit. 2. Sincere; genuine." Black's Law Dictionary, 7th Edition. The Court finds that the definition provided in Black's Law Dictionary is a good definition of the term *bona fide* in relation to the termination provision in 20 C.F.R. § 655.731(c)(7)(ii). See Administrator v. Native Technologies, ARB Case No. 98-034, 1996-LCA-2 (ARB May 28, 1999)(indicating that undefined terms in a statute are given their ordinary meaning with consideration to the overall context of a statute). In this case, even assuming the alleged termination letter was sent to Ms. Innawalli, the Court finds that the termination was not *bona fide* because, given AITC's actions and conduct following April 2002 as discussed above, the termination was not made in good faith and was not genuine, but instead entailed simulation and pretense.

Ms. Innawalli claims damages in the amount of \$60,000.00 for back wages for one year, \$1,120.00 for airfare to return to India, \$9,405.37 for attorney's fees, and \$580.33 for the cost of a copy of the hearing transcript. While Ms. Innawalli has proven her claim with regard to the \$60,000.00 back wages, Ms. Innawalli is denied damages for her airfare back to India, attorney's fees, and transcript costs. Because the Court found that AITC did not terminate Ms. Innawalli, AITC is not liable for Ms. Innawalli's return flight to India, which did not take place until January 2004. In addition, Ms. Innawalli seeks attorney's fees on the basis that she hired an attorney to obtain her I-94 from AITC. The INA does not allow for attorney's fees on such basis. Likewise, Ms. Innawalli is not allowed damages for the cost of acquiring the hearing transcript. Lastly, based on the Court's determination that AITC failed to pay required wages to Ms. Innawalli, the Court assesses a civil money penalty against AITC in the amount of \$1,000.00, pursuant to 20 C.F.R. § 655.810(b).

Accordingly,

ORDER

It is hereby **ORDERED, ADJUDGED AND DECREED** that:

- 1) Respondent shall pay back wages to Lina Susan Innawalli (f/k/a Lina Susan Verghese) in the amount of \$60,000.00.
- 2) Respondent shall pay the Department of Labor, in accordance with 20 C.F.R. § 655.810(f), a civil penalty in the amount of \$1,000.00 for willful failure to pay required wages.

So ORDERED.

A

RICHARD D. MILLS
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 CFR § 655.845, any party dissatisfied with this Decision and Order may appeal it to the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210, by filing a petition to review the Decision and Order. The petition for review must be received by the Administrative Review Board within 30 calendar days of the date of the Decision and Order. Copies of the petition shall be served on all parties and on the administrative law judge.