U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 March 2006

CASE NO.: 2005-LCA-00042

In the Matter of

ADMINISTRATOR, WAGE AND HOUR DIVISION
Prosecuting Party

v.

PRIORITY 1 SOFTWARE SOLUTIONS, LLC and **ANTHONY CORRADETTI,** Individually and as President of **PRIORITY 1 SOFTWARE SOLUTIONS, LLC**
Respondent

Appearances: Susan B. Jacobs, Esquire
On behalf of Prosecuting Party

Joseph W. McGuire, Esquire
On behalf of Respondent

Before: Janice K. Bullard
Administrative Law Judge

DECISION AND ORDER

This matter arises under the Immigration and Nationality Act H-1B visa program ("the Act" or "INA"), 8 U.S.C. § 1101 (a)(15)(H)(I)(b) and § 1182(n), and the implementing regulations found at 20 C.F.R. Part 655, Subparts H and I, 20 C.F.R. § 655.700 et seq.

I. INTRODUCTION

A. Statutory Background

The Immigration and Nationality Act's ("INA") H-1B visa program permits American employers to temporarily employ non-immigrant aliens to perform specialized[1] jobs in the United States. 8 U.S.C. § 1101(a)(15)(H)(i)(b). In order to protect U.S. workers and their wages from an influx of foreign workers, an employer must file a Labor Condition Application

[1] "Specialized occupation" is defined within the Act as an occupation requiring the application of highly specialized knowledge and the attainment of a bachelor's degree or higher. 8 U.S.C. § 1184(i)(1).

("LCA") with the Department of Labor ("DOL") before an alien will be admitted to the United States as an H-1B non-immigrant worker. 8 U.S.C. § 1182(n)(1). As part of that LCA, the employer must attest that it:

> (i) Is offering and will offer during the period of authorized employment to [H-1B employees] wages that are at least –
>
> (I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or
>
> (II) the prevailing wage level for the occupational classification in the area of employment,
>
> whichever is greater, based on the best information available as of the time of filing the application…

Id. at §§ 1182(n)(1)(A)(i)(I)&(II). This wage requirement restricts American employers from paying foreign workers less than their American counterparts. The requirement thus acts as a disincentive to hiring non-immigrant workers over American workers.

The Immigration and Naturalization Service of the United States ("INS") identifies and defines the occupations covered by the H-1B category and determines an individual's qualifications. DOL administers and enforces the LCA relating to the alien's employment. 20 C.F.R. § 655.705. Employers who seek to hire individuals under an H-1B visa must first file a LCA with DOL, and certification of the application is required before INS approves the visa petition. 8 U.S.C. § 1101(a)(15)(H)(i)(b); see also 20 C.F.R. Part 655, Subparts H and I. In the LCA, the employer must represent the number of employees to be hired, their occupational classification, the actual or required wage rate, the prevailing wage rate and the source of such wage data, the period of employment and the date of need. 20 C.F.R. §§ 655.730 -734; 8 U.S.C. § 1182(n).

After the LCA is certified, the employer submits a copy of the certified LCA to the INS along with the non-immigrant alien's visa petition to request H-1B classification for the worker. 20 C.F.R. § 655.700. If the visa is approved, the employer may hire the H-1B worker. Employers are required to pay H-1B workers beginning on the date when the nonimmigrant first is admitted to the United States pursuant to the LCA. 20 C.F.R. § 655.731(c)(6). Employers are required to pay H-1B employees the required wage for both productive and non-productive time. Employment-related nonproductive time, or "benching", results from lack of available work or lack of the individual's license or permit. 8 U.S.C. § 1182(n)(2)(c)(vii); 20 C.F.R. § 655.731(c)(7)(i). The employer's duty to pay the required wage ends when a bona fide termination occurs, but if the employer rehires the "laid off" employee, a bona fide termination is not established. 20 C.F.R. § 655.731(c). An employer need not pay wages for H-1B visa workers in nonproductive status at their voluntary request or convenience. Id. The employer must notify the INS that is has terminated the employment relationship so that the INS may revoke approval of the H-1B visa. 8 C.F.R. § 214.2(h)(11). Employers must notify INS that the employment relationship has been terminated so that the visa petition may be canceled. 20 C.F.R. § 655.731(7)(ii); 8 C.F.R. § 214.2(h)(11); 8 C.F.R. § 214.2(h)(4)(iii)(E).

B. Procedural History

Priority 1 Software Solutions ("Priority 1") filed LCAs with the Department of Labor in order to secure H-1B visas for three "web developers" from Turkey: Ali Batuk, Emrah Gozcu, and Ramazan Demirkan. The prevailing wage rate attested to in the LCAs was $58,500.00. The H-1B visas were approved and Mr. Batuk and Mr. Gozcu came to the United States. Subsequently thereafter, the Deputy Administrator of the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division ("the Administrator") conducted an investigation of Priority 1 Software Solutions, LLC and Anthony Corradetti, individually and as president of Priority 1 Software Solutions, LLC (collectively referred to as "Respondent"), concerning two of the LCAs[2] filed by Priority 1 under the H-1B provisions of the INA. Respondents were notified by a determination letter dated August 16, 2005, that the Administrator had determined that Respondent had failed to pay wages as required in violation of 20 C.F.R. § 655.731(c) and owed back wages in the amount of $54,054.00.[3]

By memorandum dated August 31, 2005, Respondent disputed the determination and requested a formal hearing before the DOL Office of Administrative Law Judges ("OALJ"). The case was subsequently assigned to me. By Notice of Hearing issued September 9, 2005, I scheduled a hearing to be held on October 4, 2005, in Cherry Hill, New Jersey. On September 19, 2005, both parties jointly moved to adjourn the hearing until after the week of January 9, 2006, in order to conduct discovery and explore resolution of the case. By Order issued September 20, 2005, I granted the motion to reschedule the hearing but denied the motion to reschedule it to the proposed date. Pursuant to my Order, the parties agreed to attend the hearing on November 9, 2005.

The hearing was held on November 9, 2005, in Cherry Hill, New Jersey. At the hearing,[4] sworn testimony was taken of three witnesses; Ali Batuk, Mary Pat Dodds, and Anthony Corradetti; and evidence was entered into the record. The Prosecuting Party in this matter, the Administrator, entered eleven (11) exhibits into evidence[5] while Respondent entered two (2) exhibits into evidence.[6] Each party submitted a Post-Hearing brief.[7] This Decision and Order is based upon the evidence of record, the arguments of the parties, and an analysis of law.

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[2] Ramazan Demirkan never arrived in the United States and thus never utilized his H-1B visa.

[3] That figure was arrived at by the Administrator as follows: Backwage computations were done for each H-1B non-immigrant by dividing the total amount of days each non-immigrant "worked" for Respondents by 365 (days in the year). Ali Batuk was "employed" by respondents from May 21, 2001 through February 11, 2002 (266 days or 0.728767 of a year). Emrah Gozcu was "employed" by respondents from July 3, through September 12, 2001 (71 days or 0.194521 of a year). The resulting percentage for each H-1B non-immigrant was then multiplied by the required prevailing wage of $58,500. This computation yielded $42,646.50 due in back wages to Ali Batuk and $11,407.50 due to Emrah Gozcu. (DB at 13).

[4] The citation "Tr. at -" denotes the transcript of the November 9, 2005 formal hearing.

[5] The citations "AX-1" through "AX-11" denote the Administrator's exhibits.

[6] The citations "RX-1" and "RX-2" denote Respondent's exhibits.

[7] The citation "AB at -" denotes the Administrator's post-hearing brief dated January 27, 2006.
The citation "RB at -" denotes Respondent's post-hearing memorandum of law dated January 27, 2006.

C. Contentions of the Parties

1. The Administrator

The Prosecuting Party in this matter contends that Respondents owe back wages in the amount of $54,054.00 to H-1B non-immigrants Ali Batuk and Emrah Gozcu. The Administrator contends that Respondents failed to pay wages in violation of 8 U.S.C. § 1182(n)(1)(A) and 20 C.F.R. § 655.731(c). Further, the Administrator argues that Anthony Corradetti is individually liable for violations under the Act because he is no more than an "alter ego" for Priority 1.

2. Respondents

Respondents contend that the Administrator's claim should be denied because the two H-1B non-immigrants were never "employed" by Priority 1. Alternatively, Respondents argue that if employment is established, the period of owed back wages is less than that determined by the Administrator. Finally, Respondents contend that Anthony Corradetti should not be held personally liable for any violation.

D. Issues

The issues presented in this case for resolution are:

1. Is Priority 1 Software Solutions, LLC, liable for $54,054.00 in back wages to two H-1B non-immigrants in violation of 8 U.S.C. § 1182(n)(1)(A) and 20 C.F.R. § 655.731(c)?

2. If Priority 1 is found liable for back wages, should Anthony Corradetti be held individually liable for Priority 1's violations of the Act?

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Factual Background

1. Testimony of Ali Batuk

Ali Batuk testified on behalf of the Administrator at the formal hearing. He described being contacted at his home in Turkey in August, 2000, by [Mustafa] Tanyeri about a product called Mind Wall. Tr. at 6. Mind Wall, which was designed by Korhan Koya, is computer security software that basically protects computer networks against hackers. (Tr. at 7, 27). Mr. Tanyeri told Mr. Batuk that he had partners in New Jersey, including Anthony Corradetti, who wanted to invest in Mind Wall, bring it to the U.S., develop it further and then market it. (Tr. at 7). The partners needed a team to go over to the U.S. and perform demonstrations of Mind Wall to potential investors. (Tr. at 7). Mr. Tanyeri asked to meet Mr. Batu and Mr. Gozcu in Istanbul, together with Mr. Tanyer's partner Sedat Munuz, to discuss their interest in participating in the project. (Tr. at 7). They met, and Mr. Batuk agreed to go to the U.S. with the understanding that all of his expenses would be paid. (Tr. at 7).

Batuk arrived in Philadelphia, Pennsylvania on or around September 24, 2000 with a B-1/B-2 visitor visa. (Tr. at 8, 27). At that time, Batuk only planned on being in the U.S. for a few weeks in order to perform some demonstrations. However, Batuk actually remained in the U.S. on that initial trip until January of 2001, residing in Moorestown, New Jersey with Gozcu and Ramazan Dorian in a house rented by Priority 1. (Tr. at 8, 28). Mrs. Batuk and Gozcu demonstrated the project, and at a demonstration in New York, NY, met Chris Kritas who joined as a shareholder partner. (Tr. at 9, 30).

Before Batuk returned to Turkey in January of 2001, Tanyeri told him the partners ("Priority 1") wanted to sponsor him and Gozcu for H-1B visas. (Tr. at 8). Batuk and Gozcu had subsequent discussions about the H-1 B visa prospects with Corradetti and Munuz as well. (Tr. at 8). As a result of the H-1B discussions with the partners of Priority 1, Batuk and Gozcu met with Priority 1's immigration attorney, Barbara Suri. (Tr. at 9). Suri assisted Batuk and Gozcu in gathering documents needed for their visa applications and then suggested that they return to Turkey and wait for their application to be processed. (Tr. at 9). Batuk testified that as part of the application process, he and Gozcu signed employment contracts with Priority 1 prior to returning to Turkey. (Tr. at 9; Batuk contract at AX-3 at 16). According to the contract, which was signed by Anthony Corradetti on behalf of Priority 1, Batuk was to be paid $67,000 annually. (Tr. at 11; AX-3 at 16). After the Immigration and Naturalization Service ("INS") approved Priority 1's petitions for H-1B visas for Batuk and Gozcu, Batuk returned to New Jersey on May 19, 2001, on a flight that he paid for himself. (Tr. at 11; 43). Gozcu arrived in New Jersey approximately two weeks later. (Tr. at 12). Although an H-1B visa was also obtained by Priority 1 for Ramazan Demirkan, he did not return to the U.S. on that visa. (Tr. at 32-33).

Batuk testified that upon returning to New Jersey he immediately began working in the Priority 1 office on May 21, 2001. (Tr. at 13). For the first three and one-half months after his return, Batuk lived in the same rented house in Moorestown, New Jersey, with Gozcu. (Tr. at 13, 14). Priority 1 paid the rent, and he and Gozcu were transported to and from the Moorestown house to Priority 1's by others, such as Munuz, because Batuk did not have a car. (Tr. at 13). In September of 2001, Batuk moved into Anthony Corradetti's son's house, Robert Corradetti, and lived there for about five months. (Tr. at 14). Robert Corradetti drove him back and forth from work to his home every business day. (Tr. at 14). At Priority 1, Batuk and Gozcu performed a number of different tasks, including: preparing tasks for Mind Wall, giving further demonstrations of Mind Wall, establishing a company network, creating a T1 internet connection, installing several servers, establishing accounts for workers, and fixing Anthony Corradetti's personal computer problems. (Tr. at 14-15). In addition, they built websites and performed software development for Anthony Corradetti's other company, Mar-Khem, which was located in the same office space as Priority 1. (Tr. at 15). In the middle of September of 2001, Gozcu moved to Washington State to pursue employment there. Batuk remained at Priority 1 performing the same work tasks as before. (Tr. at 15).

Batuk described Priority 1's structure: Anthony Corradetti was the President, and Sedat Munuz was the Vice President. (Tr. at 15-16). Gokhan Munuz, the son of Sedat Munuz, also worked for Priority 1. (Tr. at 16). As far as Batuk knew, aside from other partners, Corradetti,

the two Munuzes, Gozcu, and himself were the only employees of Priority 1. (Tr. at 16). Batuk testified that Priority 1 did not employ twenty-five employees. (Tr. at 16-17).

When asked whether he was paid any wages while working for Priority 1, Batuk testified, "We got paid what's called pocket money, not wages, like around $50.00, $60.00 a week, sometimes later $100.00 a week. More like pocket money, not wages." (Tr. at 17). This "pocket money" was paid in cash at first and then by check. (Tr. at 17). As far as Batuk was aware, taxes were never deducted from these payments and he never received a W-2 form. (Tr. at 20). Batuk spoke to Corradetti on several occasions regarding the fact that he was not being paid his promised salary. Corradetti expressed sympathy but explained that there was no money to pay them with and assured him that they would be compensated in the near future. (Tr. at 20).

Batuk never signed an agreement that stated housing was part of the compensation promised him. (Tr. at 20). He was never told to go back to Turkey. (Tr. at 20). His visa was never terminated. (Tr. at 20). Batuk never worked on developing his own software at Priority 1. (Tr. at 20). No one from Priority 1 ever offered to fly him home to Turkey. (Tr. at 20). Towards the end of the year 2001, Batuk moved to another apartment and sent a letter to the company asking for his salary and information about his taxes. After he received no response, he sent his resignation letter to the company in March of 2002. (Tr. at 21). Batuk testified that he stayed at Priority 1 without being paid a salary because in the beginning he "believed all the words of sympathy" and because "this was a foreign country, a foreign concept for me. So I had no information about, you know, the legal ways and where I should go and where I should apply to." (Tr. at 22).

On cross-examination, Batuk testified that Priority 1 paid an attorney to help him obtain a driver's license "because [Batuk] didn't have a pay stub." (Tr. at 24). The first time Batuk tried to apply for a driver's license, he was told by the [DMV] that he needed a pay stub. (Tr. at 36). Batuk asked Priority 1 for a pay stub but they would not give him one. (Tr. at 36). Batuk also testified that Robert Corradetti gave him a car, but he was unable to use it because he could not register it. (Tr. at 24; 38). Batuk left the car in the parking lot of Priority 1. (Tr. at 39). Shortly after Batuk obtained his driver's license he moved out of the area to Patterson, New Jersey. (Tr. at 24). Batuk also testified that at his request, family sent him money that he used to return to Turkey in June of 2002. (Tr. at 25-26). Batuk then returned to the U.S. in September or October of 2002. (Tr. at 26).

Batuk never asked [Anthony] Corradetti to have his visa cancelled because Batuk knew that he would either have to change his status or leave the country. (Tr. at 26). Batuk believed that Mind Wall was a legitimate software product with the potential to be very successful. (Tr. at 31-32).

2. Testimony of Mary Pat Dodds

Mary Pat Dodds is an Enforcement Coordinator and H-1B Regional Coordinator for the U.S. DOL, Wage and Hour Division. (Tr. at 47). She testified on behalf of the Administrator. Ms. Dodd's duties include the responsibility to oversee every H-1B investigation done in New York, New Jersey, and some parts of Philadelphia and Maryland. (Tr. at 47). She participated in

the Wage and Hour Division investigation of Priority 1 and wrote the determination letter. (Tr. at 47-48). Ms. Dodds testified that the LCA that was used in bringing Batuk into the U.S. (AX-2) was signed by Anthony Corradetti and indicated a prevailing wage of $58,500. (Tr. at 50). As a result of her investigation, Ms. Dodds determined that Priority 1 had violated H-1B regulations requiring payment of the prevailing wage to Batuk and Gozcu.. (Tr. at 55-56). She computed back wages in the total amount of $54,054 for the two H-1B non-immigrants (Tr. at 57-58). Dodds did not give Priority 1 any credit for the "pocket money" payments that they made because the payments did not comply with the definition of "wages" within the regulations. (Tr. at 58-59). Ms. Dodds requested pay roll records from Priority 1 but never received them. (Tr. at 59-60). Ms. Dodds declined to give Priority 1 credit for housing because it wasn't treated as wages and the non-immigrants did not agree in writing to a housing deduction as part of their compensation. (Tr. at 60). In addition, Priority 1 never submitted any records of the fair market value of the housing. (Tr. at 60).

Ms. Dodds named Anthony Corradetti as individually liable in the determination letter because she determined that there was no evidence that the corporation acted like a corporation. (Tr. at 61-62).

3. Testimony of Anthony Corradetti

Anthony Corradetti is the president of Priority 1 and testified on behalf of Respondents. (Tr. at 80). Mr. Corradetti is also a principle in Mar-Khem Industries, which was co-located with Priority 1 in Cinnaminson, New Jersey. (Tr. at 80). Corradetti and his wife own the Cinnaminson facility, which consists of approximately 60,000 square feet. (Tr. at 86-87).

Mar-Khem buys excess inventories and sells them to people who are going to move it very quickly. (Tr. at 81). Corradetti has been involved in Mar-Khem for his entire adult life. (Tr. at 80).

Corradetti first learned of Mind Wall from Priority 1's vice president, Sedat Munuz. (Tr. at 81-82). Corradetti saw an opportunity, and set into motion the necessary steps to form Priority 1 to market Mind Wall. (Tr. at 82). Corradetti engaged the law firm of Blank [Rome] in Philadelphia, with which he had had previous legal dealings, to form the corporation. (Tr. at 82-83). He did not want to market Mind Wall out of Mar-Khem because he said "[i]t would be very difficult to sell software in the closeout business. I don't think it would do too well. I don't think we would get any customers." (Tr. at 83). Priority 1's shareholders consisted of himself, [Ruhi Bayazit], [Mustafa] Tanyeri, Soner Tanyeri, Korhan Koya (the developer) and Sedat Munuz. (Tr. at 83-84; RB at 7). Sedat Munuz was born in Turkey but lived in New Jersey. Corradetti has known him for at least twenty-five years. (Tr. at 84-85).

Priority 1 had bank accounts and checking accounts, and used a bookkeeper, Mary Curis. (Tr. at 85). Corradetti was the only shareholder that loaned the corporation money. (Tr. at 85). Anthony Corradetti was the only source of money to pay Priority 1's expenses. (Tr. at 103). Priority 1's expenses included purchasing new computers and installing a T1 line. These expenses were paid for from the Priority 1 account, funded by Corradetti. (Tr. at 88). Corradetti

also reimbursed people who did work for the company. (Tr. at 103). Corradetti never took his money out of Priority 1. (Tr. at 103).

Batuk and Gozcu first came to the United States in the fall of 2000 on visitors' visas, but with the purpose of demonstrating the Mind Wall software to raise capital to have it marketed. (Tr. at 89-90). Corradetti testified that the non-immigrants understood how important it was to raise capital for Priority 1. (Tr. at 91).

Corradetti met Chris Kritas in New York through a friend. Kritas had previously worked for MCI WorldCom and became actively involved in Priority 1, obtaining shares with the promise to make a future investment. (Tr. at 93-95). Kritas also arranged to have a beta test of Mind Wall performed. (Tr. at 95). Corradetti believed that Kritas' involvement would yield an investment, but it never occurred. (Tr. at 95-96).

Before the visa applications were filed, Corradetti believed that Priority 1 had good prospects. (Tr. at 96). Priority 1 paid for the cost of obtaining the H-1B visas and related legal fees. (Tr. at 97). Batuk and Gozcu eventually returned to the U.S. on the H-1B visas, but Ramazan Demirkan did not. (Tr. at 97-98). It was Corradetti's understanding that Demirkan was concerned about the lack of investors. (Tr. at 98). Corradetti discussed the lack of investors with Batuk and Gozcu and asked if they wanted to return to Turkey. (Tr. at 99). Corradetti believes that they had round-trip tickets and would not have incurred additional expense to return. (Tr. at 99). Corradetti testified that Batuk and Gozcu did not want to return to Turkey, but wanted to stay in the U.S. and build their own websites. (Tr. at 101). Corradetti maintained that he didn't care what they did because they were already here and he allowed them free use of the Priority 1 equipment. (Tr. at 102) They had their own keys, and were free to come and go as they pleased. (Tr. at 102).

Corradetti testified that Priority 1 had reserved five percent of stock to share with technical employees, including the two non-immigrants. (Tr. at 100). He contended that Batuk and Gozcu should have known about this from the beginning. (Tr. at 100). Corradetti also testified that he made it known to Batuk that he could not guarantee a future with Priority 1 and that Batuk never complained to him about not receiving payment. (Tr. at 100). Corradetti stated that Priority 1 continued its efforts to raise capital after Batuk and Gozcu returned to the U.S., and efforts were made to sell Mind Wall to an investor (Tr. at 100-101). However, Corradetti never found investors for Priority 1 and he finally concluded that he could not continue to finance the company. (Tr. at 102).

Corradetti testified that Priority 1 did not actually have any employees, although Gohkan Munuz was paid to act as a "spokesperson" for the company, as he spoke Turkish and English. (Tr. at 101). Corradetti did not know that the H-1B visas for which Priority 1 had petitioned would tie the non-immigrants to the company. (Tr. at 102). He only knew that if Priority 1 terminated the visas, they would have to go back to Turkey. (Tr. at 102). Therefore, he never terminated the visas. (Tr. at 102). Corradetti made the "pocket money" payments to Batuk and Gozcu for "them to get by until we got this thing going." (Tr. at 104). Batuk and Gozcu were reimbursed for out of pocket expenses, including travel. (Tr. at 104).

On cross-examination, Corradetti testified that he did not pay any payroll taxes on the payments to Batuk and Gozcu because they were going to be five percent shareholders if Priority 1 ever took off. (Tr. at 118). Corradetti testified that this "five percent" provision was in writing somewhere and that the two non-immigrants certainly knew about it. (Tr. at 118).

When asked why the letter to the INS marked AX-3 stated that "Priority 1 employs approximately 25 employees…", Corradetti explained that he is basically illiterate and neither read nor created that document. (Tr. at 119). Further, Corradetti testified that he had not seen a document in the Administrator's file on which his signature appeared, including the signed labor condition application, because of his illiteracy. (Tr. at 120).

Corradetti estimated that he personally loaned Priority 1 about "100 and some thousand dollars" through transfers from his checkbook into the company's account. (Tr. at 124). He has no understanding of the limitations of liability or other obligations of an LLC. (Tr. at 125). No dissolution papers have been filed to dissolve Priority 1. (Tr. at 127). When filing the LCAs for the H-1B visas, Corradetti accepted the assertions of Mr. Munuz. (Tr. at 128). Corradetti never commingled the funds of Priority 1 and Mar-Khem. (Tr. at 128). All of Priority 1's assets were destroyed by flood. (Tr. at 128). Priority 1 received no reimbursement for housing or other costs of Batuk and Gozcu. (Tr. at 140).

B. Legal Analysis

1. Whether Respondent Priority 1 is Liable For Back Wages under the Act

The Prosecuting Party alleges that Respondent has failed to pay wages to two H-1B non-immigrants in violation of 8 U.S.C. § 1182(n)(1)(A) and 20 C.F.R. § 655.731(c) for the period of May 21, 2001 through February 11, 2002. (AB at 11).

As previously stated, an employer seeking to employ H-1B non-immigrants in a specialty occupation must attest in a labor condition application ("LCA") that they will pay the H-1B non-immigrants a required wage rate.[8] 8 U.S.C. § 1182(n)(1)(A). The regulations provide that "[t]he required wage must be paid to the employee, cash in hand, free and clear, when due…" 20 C.F.R. § 655.731(c)(1). The regulations then authorize the Administrator, through investigation, to determine whether an H-1B employer has failed to pay the required wage. 20 C.F.R. § 655.805(a)(2).

In this case, Priority 1 attested to a prevailing wage rate of $58,500.00 per year in the LCA it relied upon to obtain H-1B visas for Ali Batuk and Emrah Gozcu. (AX-2). That figure was deemed the required wage rate by the Administrator, which determined that "because the H-1B employees were not paid any wages, the prevailing wage set forth on the LCA was the required wage."[9] (AB at 11). Respondent does not contest that $58,500 is the required wage rate

[8] The required wage rate is the greater of the "actual wage" or the "prevailing wage" as those terms are defined by the Act. 8 U.S.C. § 1182(n)(1)(A)(I) and (II).

[9] More properly stated, the prevailing wage rate is the proper required wage rate because, in light of the fact that Priority 1 did not employ other "web developers," Respondent did not pay actual wages to other individuals with similar experience and qualifications for the specific employment in question.

in this case. Rather, Respondent contends that (a) Ali Batuk and Emrah Gozcu were not "employed" under the Act, and (b) if it is found that they were "employed" under the Act, then they ceased being employed when they began looking for other jobs. (RB at 9, 13).

a) Whether Ali Batuk and Emrah Gozcu Were "Employed" Under the Act

Respondent Priority 1 argues that it does not owe back wages to the two H-1B non-immigrants in this case because Ali Batuk and Emrah Gozcu were not "employees" of Priority 1 within the meaning of the H-1B provisions. (See RB at 9 ("Because Priority 1 never became a going concern and failed to attract investors it was impossible to employ the complainants" and "The Administrator's argument that they were 'employed' flies in the face of the plain reality there was no money to pay them or anybody else.")). I believe that the issue is more properly phrased as whether Respondent was an "H-1B employer" of the two non-immigrants according to the language of Section 655.805(a)(2).[10] Regardless, the disposition of the issue does not hinge on semantics, and the same result will obtain regardless of the phrasing.

Pursuant to 20 C.F.R. § 655.715, "employer" within the meaning of the H-1B visa provisions means:

> A person, firm, corporation, contractor, or other association or organization in the United States which has an employment relationship with H-1B non-immigrants and/or U.S. Worker(s). *The person, firm, contractor, or other association or organization in the United States which files a petition on behalf of an H-1B non-immigrant is deemed to be the employer of that H-1B non-immigrant.* (Emphasis added).

20 C.F.R. § 655.715. Further, an "employment relationship" or the phrase "employed by the employer" means "the employment relationship as determined under the common law, under which the key determinant is the putative employer's right to control the means and manner in which the work is performed." Id. The term "employee" is not defined in the regulations.

It is undisputed that Priority 1 petitioned for H-1B visas on behalf of Ali Batuk and Emrah Gozcu. (AX-2; RB at 9). Priority 1 thus clearly meets the regulatory definition of "employer". Nevertheless, Respondent contends that Ali Batuk and Emrah Gozcu were not "employed" under the Act because (a) the intention to employ [Batuk and Gozcu] was frustrated by impossibility; (b) [Priority 1] did not "bench" Batuk and Gozcu; (c) return travel at no cost was made available to [Batuk and Gozcu]; and (d) neither Batuk's nor Gozcu's decision to remain in New Jersey nor Priority 1's assistance in money, accommodations and facilities created "employment" for H-1[B] purposes. RB at 10-13.

I am not persuaded by any of Respondent's arguments on this issue. Respondent argued that because Priority 1 lacked the investment capital to pay the non-immigrants, it was impossible to have an employment relationship. However, the regulations' definition of "employed by the employer" is not contingent on an employer's ability to pay the wages

[10] This is because the Administrator is given the power to determine "whether the H-1B employer has" failed to pay the required wage rate. § 655.805(a)(2).

described in the LCA. Employment under the Act is defined in terms of the common law meaning of an employment relationship. Wages, salaries, and the usual tax deductions are necessary for an employer to comply with the Act, but their absence is not dispositive of whether a company is an employer. It is not the act of receiving required wages that causes a non-immigrant alien to become an H-1B employee. An H-1B non-immigrant becomes an "employee" when the individual arrives in the United States under the terms of the LCA that an employer has submitted for certification. Employers are required to pay an H-1B worker beginning on the date when the nonimmigrant first is admitted to the United States pursuant to the LCA. 20 C.F.R. § 655.731(c)(6). Employers are required to pay H-1B employees the required wage for both productive and non-productive time, even where there is no work. 8 U.S.C. § 1182(n)(2)(c)(vii); 20 C.F.R. § 655.731(c)(7)(i).

I find that the concept of impossibility of fact, generally recognized as a defense to a contractual obligation, has no application to the requirements and obligations flowing from H-1B visa procedures. I further find that the evidence establishes under both the prevailing regulations, and under common law, that an employment relationship existed between Priority 1 and Messrs Batuk and Gozcu. It is undisputed that Anthony Corradetti, as president of Priority 1, signed an employment contract between the two H1-B non-immigrants. (AX-3 at 16; AX-4 at 14). I find credible Mr. Batuk's testimony that he and Mr. Gozcu reported to Priority 1's office on every business day and performed such tasks for Priority 1 as giving further demonstrations of Mind Wall, establishing a company network, creating a T1 internet connection, installing servers, establishing accounts and performing other tasks. (Tr. at 14-15). Anthony Corradetti conceded that the two non-immigrants performed activities that benefited Priority 1. (Tr. at 134). Anthony Corradetti reimbursed the two H-1B employees for such things as food and cigarettes from Priority 1's account. (Tr. at 103). The record is clear and undisputed that the two non-immigrants performed services for Priority 1 at the request of Priority 1 and Priority 1 reimbursed them for expenses.[11] The fact that Priority 1 never attracted the investment capital needed to pay the required wages to the two employees is of no consequence to requirements imposed by the H-1B visa program. Priority 1 remained obligated to pay the required wage to the non-immigrants unless it terminated their employment. See 20 C.F.R. § 655.731(c)(7).

I reject Respondent's assertion that Batuk and Gozcu's employment was terminated because they were aware of the financial condition of the company, and that their decision not to return home promptly was entirely voluntary. As the regulations make clear at 20 C.F.R. § 655.731(c)(7)(ii):

> 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)).

[11] It is not disputed that Priority 1 certainly did not compensate them with "wages" as that term is defined by the regulations.

20 C.F.R. § 655.731(c)(7)(ii). The two H-1B employees arrived in the U.S. in accordance with their H-1B visas and reported to Priority 1's office regularly, performing work activities described above. Corradetti was fully aware that they were performing tasks for Priority 1 and even reimbursed them for certain expenses. After review of the record, I am satisfied that Priority 1 did not initiate a *bona fide* termination of the employment relationship between itself and either of the two H-1B employees until it finally notified the INS by letter dated December 11, 2001, that it was withdrawing its support and sponsorship of Mr. Gozcu's H-1B visa. (See AX-5). Accordingly, I reject Respondent's assertion that the H-1B employees' decisions not to promptly return home to Turkey acted as a termination of the employment relationship. The employer must notify the INS that it has terminated the employment relationship so that the INS may revoke approval of the H-1B visa. 8 C.F.R. § 214.2(h)(11). Employers must notify INS that the employment relationship has been terminated so that the visa petition may be canceled. 20 C.F.R. § 655.731(7)(ii); 8 C.F.R. § 214.2(h)(11); 8 C.F.R. § 214.2(h)(4)(iii)(E).

Respondent's argument that "termination" of employment was effectuated by the fact that Priority 1 provided the H-1B employees with pre-paid, round-trip tickets back to Turkey is also of no merit. (See RB at 12). Again, Respondent cites no legal authority for this position. It must be noted that there exists a factual dispute as to whether round-trip tickets were ever provided to the H-1B employees. See e.g. Tr. at 21 (Batuk testifying that no one from Priority 1 offered to fly him home to Turkey); but see Tr. at 99 (Corradetti testifying, "I believe that they had round trip tickets. I'm not positive but I believe that they had round trip tickets"). Regardless, this argument fails for two reasons. The first is that a *bona fide* termination under the regulations clearly requires more than just providing no-expense return travel for the non-immigrant. See 20 C.F.R. § 655.731(c)(7)(ii) and 8 C.F.R. § 214.2(h). Secondly, even if I were to find that round-trip tickets were provided to Batuk and Gozcu, the fact remains that after they arrived on their H-1B visas, they both provided employment services to Priority 1 at Priority 1's direction. As such, I find their employment could not have been terminated by the fact that they were allegedly given no-cost, round-trip tickets back to Turkey.

Respondent also argues that the two H-1B non-immigrants were not employed under the Act because "neither their decisions to remain in New Jersey nor Priority 1's assistance in money, accommodations and facilities created 'employment' for H-1[B] purposes." (RB at 13). Again, Respondent cites no legal authority in support of this position. The essence of this final argument is "such theoretical employment was effectively terminated by their decision to stay on in the face of no job and no pay." (RB at 13). As I have discussed, the record is clear that the two non-immigrants reported to Priority 1's office and performed beneficial tasks for the company. Batuk testified that he spoke to Corradetti several times about not being paid his promised salary. (Tr. at 20). He explained that Corradetti professed sympathy for his situation but explained that Priority 1 did not have the money at the present and that the H-1B employees would be compensated shortly. (Tr. at 20). When asked why he stayed at Priority 1 even though he was not paid the promised wages, Batuk testified that he believed Corradetti's sympathy at first. (Tr. at 22). The evidence demonstrates that Priority 1 made numerous, small "pocket money" payments to the two non-immigrants. RX-1. I therefore find that it reasonable to accept that Batuk and Gozcu did not believe that their work at Priority 1 was terminated, even though they were not being paid their promised wages. Priority 1gave the two individuals money and

living accommodations; its president testified that he expected his efforts to attract investment capital to bear fruit; and there is no evidence that the company took affirmative action to terminate their employment.

Accordingly, I affirm the Administrator's determination that Respondent Priority 1 Software Solutions, LLC, violated the applicable required wage rate provisions of the Act. U.S.C. § 1182(n)(1)(A); 20 C.F.R. § 655.731(c); 20 C.F.R. § 655.805(a)(2).

b) Respondent Priority 1's Period of Violation of the Act

Respondent argues that the Administrator erred in her computation of back wages because Messrs Gozcu and Batuk's H-1B employment ended when they realized or should have realized that they would not be paid. (RB at 13-14). The Administrator based its computations as follows: (a) Ali Batuk was employed by Priority 1 from May 21, 2001 through February 11, 2002 (266 days or 0.728767 of a year); (b) Emrah Gozcu was employed by Priority 1 from July 3 through September 12, 2001 (71 days or 0.194521 of a year). (AB at 13; AX-10). Respondent does not contest the validity of the start dates used by the Administrator for either of the H-1B non-immigrants, but contests the date when employment ended.

The Administrator used as the final dates of employment February 11, 2002, and September 12, 2001, which are the dates on which Batuk and Gozcu affirmatively resigned from Priority 1, respectively. (AB at 12). This is corroborated by Mr. Batuk's testimony, (See Tr. at 15 and 21) and by Respondent's letter to INS in December, 2001, terminating Mr. Gozcu's visa. Respondent's argument that Batuk and Gozcu's H-1B employment ended when they should have realized that they would not be paid is without merit. Anthony Corradetti conceded himself that Priority 1 derived some benefit from the work activities of the two H-1B non-immigrants. (Tr. at 134). Batuk testified that he and Gozcu performed tasks for Priority 1 at its office for their entire length of employment and that he, himself, continued to work at Priority 1's office after Gozcu left. (Tr. at 15). Nothing in the record supports the assertion that there was a *bona fide* termination of the employment relationship between the two H-1B employees and Priority 1 prior to their respective resignations. Accordingly, I find that the Administrator's computation of back wages was proper and based upon accurate dates of H-1B employment. I find that Priority 1 owes $54,054.00 in back wages under the Act.

2. Whether Respondent Anthony Corradetti Is Individually Liable for Priority 1's Violation of the Act

The Administrator named Anthony Corradetti individually liable for Priority 1's violation of the required wage provisions of the Act in her determination letter dated August 16, 2005. (AX-11). The Administrator requests that I affirm that determination because Anthony Corradetti "is the alter ego of Priority 1 and, as such, had an employment relationship with both of the H-1B employees." (AB at 7).

a) Employment Relationship

The Administrator argues that Mr. Corradetti is personally responsible to pay the back wages found due. Since Priority 1 is insolvent, the determination of this issue will establish whether the non-immigrants may have a chance of receiving the compensation to which they are entitled. Although, as the Administrator has emphasized, the definition of "employer" includes "the *person*…which files a petition on behalf of an H-1B non-immigrant…," 20 C.F.R. § 655.715 (emphasis included in the Administrator's brief), Mr. Corradetti does not become the liable employer simply because he signed the LCA and H-1B petitions for Messrs Batuk and Gozcu. All of the documentation supporting the two H-1B visa applications identified Priority 1 as the employer and all were clearly signed by Corradetti in his capacity as an officer of the company rather than in his personal capacity. (AX-2 through AX-4). The evidence does not establish that Anthony Corradetti sought employment of the two H-1B non-immigrants in a personal capacity.[12] Accordingly, I find that personal liability cannot be attached to Anthony Corradetti solely upon the definition of *employer* found at 20 C.F.R. § 655.715. Mr. Corradetti can be found responsible for the obligations of Priority 1 only if he can be found to have been the "alter ego" of the company. If the evidence demonstrates that "the corporate veil was pierced" because of the actions of Mr. Corradetti, then, ipso facto, Anthony Corradetti stands in the same stead as Priority 1, and may be held responsible for the compensation due to Messrs. Batuk and Gozcu.

b) Piercing the Corporate Veil

The "alter ego" doctrine that holds an individual personally liable for the wrongful actions of a corporation, was accepted by the Third Circuit Court of Appeals in United States v. Pisani, 646 F.2d 83 (3d Cir. 1981)[13]. The Court affirmed the determination of the district court that a physician who was the president and sole stockholder of a nursing home corporation, was the "alter ego" of the corporation and as such was personally liable for Medicare overpayments received by the corporation. Pisani, 646 F.2d at 85. In determining whether the "alter ego" doctrine applied, the Court considered eight relevant factors set forth in DeWitt Truck Brothers v. W. Ray Flemming Fruit Co., 540 F.2d 681 (4th Cir. 1976): (1) whether the corporation is grossly undercapitalized for its purposes; (2) failure to observe corporate formalities; (3) non-payment of dividends; (4) the insolvency of the debtor corporation at the time; (5) siphoning of funds of the corporation by the dominant stockholder; (6) non-functioning of other officers or directors; (7) absence of corporate records; and (8) the fact that the corporation is merely a façade for the operations of the dominant stockholder or stockholders. Pisani, 646 F.2d at 88 (citing in part and quoting in part Dewitt Truck, 540 F.2d at 686-87). The Third Circuit also added, "[i]n addition, the situation 'must present an element of injustice or fundamental unfairness,' but a number of these factors can be sufficient to show unfairness." Pisani, 646 F.2d at 88 (quoting Dewitt Truck, 540 F.2d at 687). The Third Circuit also stressed a concern that the federal statute at issue in Pisani could be circumvented if the defendant were not held personally liable. Pisani, 646 F.2d at 88-89.

[12] I note that Batuk did testify that he fixed Corradetti's personal computer problems.
[13] This matter arose within the jurisdiction of the Third Circuit Court of Appeals.

The Administrative Review Board ("ARB") has affirmed the use of the "alter ego" doctrine to pierce the corporate veil in the context of back wages owed to H-1B non-immigrants. Administrator v. Mohan Kutty, *et al*., 2005 WL 1359123 (ARB Case No. 03-022 (May 31, 2005). In the Mohan Kutty case, a physician, Mohan Kutty, hired eighteen medical doctors to run clinics, seventeen of whom were non-immigrant aliens. The clinics experienced financial difficulties, and Kutty reduced some of the doctors' salaries. Eight of the doctors threatened legal action if they were not paid in full, and Kutty stopped paying them. After the Administrator began to investigate the doctors' complaints, Kutty fired seven of the doctors. Id. The Administrator named Kutty and various corporate entities as liable employers under the Act. Because all of Kutty's clinics had closed, the Administrator argued that the corporate veil should be pierced, and determined that Kutty was personally liable for the back wages. The ALJ affirmed the Administrator's determination that Kutty should be held personally liable because she found (1) that the Tennessee corporations were "undercapitalized" and Kutty supported them with funds from his Florida businesses and his own personal funds; (2) Kutty was the sole owner and had sole control over the corporate entities that submitted LCAs; (3) Kutty made all decisions regarding the corporations and the administration of the corporate entities was shared in the same, centralized office; and (4) the assets of the corporations were interchangeable and their dealings were not at arm's length. Id. at 13.[14]

The ARB affirmed the ALJ's finding that Kutty was personally liable for the back wages. It stated:

> In light of the fact that the employing corporations are out of business and likely have no assets, a decision not to hold Kutty liable would be grossly unfair to the doctors because Kutty willfully violated the requirements of the Act. Furthermore, as the ALJ found, when Kutty terminated the doctors' employment because they engaged in protected activity, the clinics could not have continued to operate, thus any possibility that the Tennessee corporations might pay the back wages and the civil money penalties was foreclosed. Consequently, because Kutty's corporations had, in the ALJ's words, "no mind, will, or existence of their own" and his "domination" was used to perpetuate violations of the Act, we conclude that, in addition to the corporate respondents, Kutty is personally liable…

Id. at 14 (Emphasis added).

The instant case bears similarity to that in Mohan, supra., and accordingly, I find it appropriate to consider the factors set forth by Pisani, supra.. *(1) Whether the corporation is grossly undercapitalized for its purposes*. I find that Priority 1 was clearly undercapitalized for its purpose. As part of Priority 1's petition for Ali Batuk's H-1B visa, the company submitted a letter signed by Anthony Corradetti describing the nature of the firm and its assets. The letter declared to the INS that Priority 1 Software Solutions, LLC, "employs approximately 25 employees in the U.S. and has total (projected) assets of approximately $1 billion." (AX-3 at

[14] It should be noted that the ALJ applied Tennessee common law in piercing the corporate veil. A review of the listed factors she found determinative on the issue clearly demonstrates that the Tennessee common law used is tantamount to the Pisani analysis.

13). Anthony Corradetti testified that he loaned Priority 1 money in hopes of attracting investors. When I asked Mr. Corradetti how much money he lent to the company, he testified that he had loaned the company approximately one-hundred thousand dollars of his personal funds. (Tr. at 124). Corradetti also testified that he was the only person to contribute money to Priority 1. (Tr. at 85). Respondent has also alleged that Priority 1 had virtually no employees, and no employment-related records were made available to the Administrator during its investigation.

Respondent argues that Priority 1 should be viewed as a "start-up" company whose "purpose and objective was to attract the kind of investment that would allow it to launch its software business." (RB at 21). Therefore, Respondent asserts, Priority 1 was not undercapitalized for its actual purposes. Although the record supports Respondent's assertion that Priority 1 was a legitimate business venture that sought to attract investment in order to launch its company, its funding source is totally inconsistent with the projected assets it reported on the signed LCA. Accepting as credible Corradetti's assertion that he provided all of the capital of the company, $100,000.00, the amount of the prevailing wage owed to Ali Batuk and Emrah Gozcu together exceeded the total corporate funding that Corradetti provided. In addition, the LCA reported twenty-three other employees, presumably all entitled to some kind of salary. Corradetti testified that he incurred such expenses as purchasing computers, travel costs for demonstrations, and installing a T1 line. (See Tr. at 88). In light of the projected payroll and operating expenses, a budget of one-hundred thousand dollars is clearly inadequate. Even viewing Priority 1 as a "start-up" company, I am satisfied that the record establishes that it was severely undercapitalized for its purposes.[15]

(2) Failure to observe corporate formalities. There is little evidence to demonstrate the corporate formalities observed by Priority 1. Corradetti testified that Priority 1 employed a bookkeeper and maintained bookkeeping records in the ordinary course of business. (See Tr. at 108-109). However, the only records relating to Batuk and Gozcu are copies of checks paid to the two H-1B non-immigrants. No corporate records or minutes were entered into the record, nor were tax returns. (Tr. at 127). W-2 forms were never filed and taxes never withheld for any of Priority 1's employees. Despite Corradetti's testimony that Priority 1 had no employees (Tr. at 101), the record documents services performed by individuals who may qualify as employees: the two H-1B non-immigrants who provided beneficial services for Priority 1, Gohkan Munuz who acted as a "spokesperson" for the company (Tr. at 101), and Sedat Munuz who aided him in deciding how much "pocket money" to pay the two non-immigrants. (Tr. at 85). In contrast, Corradetti's other company, Mar-Khem, paid payroll taxes, filled out W-2 forms, and filed tax documents for its employees. (Tr. at 131). This demonstrates Mr. Corradetti's awareness of the tax reporting obligations of an employer, despite the failure of Priority 1 to meet those obligations. Although Corradetti claimed that the corporation had five other "shareholders" besides himself (Tr. at 83-84), Corradetti was the only shareholder who actually loaned money to

[15]I reject Corradetti's contention that he was not aware of the required wage rate provision because he had not read the LCA. Although Corradetti testified that he is practically illiterate, the hearing transcript clearly demonstrates that at the hearing Corradetti skimmed over a document (AX-9-C) on his own and explained omissions from it. (Tr. at 121). Regardless of the credibility of his testimony on this point, however, the record indicates that Corradetti was aided by an immigration attorney in filling out the LCAs. Being that attestation of the required wage rate is one of the crucial components of an LCA, Corradetti should have been aware of that provision.

the company. In fact, although Priority 1 had its own bank accounts, Corradetti was the only person who contributed funds to it. Based on these facts, I find that Priority 1 observed few or no corporate formalities. Although it is undisputable that Priority 1 was formally organized under New Jersey law, the testimony of Anthony Corradetti suggests that Priority 1 had no formal organization.

(3) Non-payment of dividends. As Priority 1 was never traded publicly, and never attained a profit, payment of dividends was impossible. This factor is therefore irrelevant in this case.

(4) The insolvency of the debtor corporation at the time. Corradetti testified that Mind Wall, Priority 1's primary asset, no longer had value (Tr. at 136) and that the company's other assets were "all destroyed with the flood." (Tr. at 128). Accordingly, I find that Priority 1 is insolvent.

(5) Siphoning of funds of the corporation by the dominant stockholder. Corradetti testified that he never took money back out of Priority 1. (Tr. at 103). Accordingly, I find that there is no evidence of siphoning of funds by the dominant stockholder.

(6) Non-functioning of other officers or directors. Although Corradetti testified that there existed four or five other shareholders, there is no evidence that those shareholders participated in the day-to-day functioning of Priority 1. Corradetti's testimony only establishes that one of the so-called "shareholders" was the developer of Mind Wall. Corradetti testified that he discussed with one of his "officers," Mr. Munuz, how much to pay the H-1B non-immigrants, but that testimony was vague and unresponsive. (See Tr. at 117). Accordingly, I find that this factor is established.

(7) Absence of corporate records. The only corporate records of record are Priority 1's Certificate of Incorporation and copies of checks on an account in Priority 1's name written out to Ali Batuk. I therefore find that there is a significant absence of corporate records in this matter.

(8) The fact that the corporation is merely a façade for the operations of the dominant stockholder or stockholders. Priority 1 acted as a façade for the operations of Anthony Corradetti to the extent that the record establishes that Priority 1 allowed Corradetti to bring over and employ two H-1B non-immigrants without having to compensate them for their services from his personal accounts or Mar-Khem's accounts, even though the two non-immigrants performed services for each. Consequently, I find that Priority 1 served to some degree as a façade for Corradetti's operations. I decline to find that the company was designed solely to further Mr. Corradetti's personal interests.

It is apparent that the majority of the Pisani factors apply in this case. In addition, to allow Corradetti to remain unanswerable for the actions of Priority 1 would constitute fundamental unfairness. Ali Batuk and Emrah Gozcu signed employment contracts that promised each of them a salary of $67,000 per annum. Respondent was required by law to pay them each a prevailing wage of at least $58,500 per annum. The record establishes that, under

the impression that they were to be paid these significant wages by Priority 1, Batuk and Gozcu traveled from Turkey to the United States and performed services that benefited Priority 1 at the request of its president, Anthony Corradetti. Corradetti was, or should have been, aware of the wages Priority 1 was required to pay the non-immigrants as I do not accept as plausible Corradetti's assertion of ignorance. He consulted counsel, and has been involved with a viable business for many years. He contends that Mind Wall is no longer of any value and the record reveals that Corradetti took no action to protect it.[16] To find in favor of Respondent would affirmatively deny the two H-1B non-immigrants remedy to recoup the back wages they were promised and then earned.

Resolution of this case in favor of the Administrator is consistent with Mohan Kutty, supra. To reiterate, the ARB stated, "In light of the fact that the employing corporations are out of business and likely have no assets, a decision not to hold Kutty liable would be grossly unfair to the doctors because Kutty *willfully* violated the requirements of the Act." Mohan Kutty, 2005 WL 1359123 at 14. I find that the gross unfairness found in Mohan Kutty is apparent in this matter. Anthony Corradetti testified that he no longer had control of Mind Wall and that all of Priority 1's other assets were destroyed by flood. Thus, Priority 1 is currently worthless and unable to pay the back wages owed. In addition, it is clear that Corradetti *willfully* violated the H-1B provisions. A *willful failure* to observe Section 655.731 is defined by the regulations as "a knowing failure or a reckless disregard with respect to whether the conduct was contrary to" the said section. 20 C.F.R. § 655.805(c). There is no question in this case that Anthony Corradetti knowingly or recklessly failed to pay the H-1B non-immigrants the required wage rate. Corradetti conceded in his testimony that he never paid them wages. As I stated previously, I decline to credit Corradetti's contention that he was not aware of the required wage rate. (See fn. 17, *infra*). He should have unquestionably been aware of the prevailing wage rate provision and he simply chose not to observe it. Consequently, it would be grossly unfair to deprive the non-immigrants of a potential source for payment of the compensation to which they are entitled.

The ARB was also concerned that because of Dr. Kutty's actions, the clinics he ran could not continue to operate and thus there was no possibility of the corporations paying back the wages that were owed to the non-immigrant doctors. Mohan Kutty , supra. That concern is present here. Although Corradetti had purchased the rights to Mind Wall (Tr. at 135), he took no precautions to protect that investment. Corradetti testified that the other "shareholders" are in possession of it in Turkey. (Tr. at 136). He gave no responsive explanation of why he did nothing to retain possession of the technology or any income it might generate. The Mind Wall software was the only asset that survived a flood that destroyed Priority 1's physical assets. Priority 1 does not have the ability to pay the back wages, in part due to Corradetti's lack of interest in protecting his acquisition of the technology.

Lastly, the ARB held Dr. Kutty personally liable in Mohan Kutty because it found that the clinic corporations he ran in Tennessee had "no mind, will, or existence of their own." Id. The same can be said for Priority 1. Corradetti testified that Priority 1 had no "employees." He claimed that there were other "shareholders," but no one other than himself ever invested money or other capital into Priority 1. Corradetti was the only individual that loaned the company

[16] Although he purchased Mind Wall from its developer (Tr. at 135), he allowed the developer to return with it back to Turkey. (Tr. at 136).

money. The company's bank accounts were sustained by him. He made all decisions concerning the company. Batuk and Gozcu even performed personal services for Corradetti, himself, and Corradetti's other business. Priority 1 was located in a building owned by Corradetti. The record suggests that Corradetti *was* Priority 1.

It is clear that a willful violation of the H-1B provisions occurred here. The record establishes that Corradetti and Priority 1 deliberately failed to pay the required wage rate. Any excuse of unawareness of that provision is unfounded. I disagree with Respondent's contention that the element of sham is necessary to make this finding. Rather, both the Third Circuit and the ARB stressed the application of factors that looked to the company's capitalization, control and structure, and applied a standard of fairness. I find that although the record in this case does not demonstrate that Priority 1 was organized as a sham company, the record reveals that Priority 1 was severely undercapitalized for its purposes and that all relevant decisions, payments, and funding were made by one individual. In addition, it is clear that if Anthony Corradetti is not found personally liable, the two H-1B non-immigrants will unfairly be denied the opportunity of collecting the wages that they earned and are owed.

For the foregoing reasons, I find that the Administrator has demonstrated that the corporate veil has been pierced[17], and that Anthony Corradetti is an "alter ego" of Priority 1 and should be personally liable for its obligations under the Act. Accordingly, I find that Anthony Corradetti is personally liable to pay the $54,054.00 in back wages owed by Priority 1.

III. CONCLUSION

For the foregoing reasons, I affirm the Administrator's determination that Priority 1 Software Solutions, LLC, failed to pay $54,054 in required wages to H-1B non-immigrants Ali Batuk and Emrah Gozcu in violation of 8 U.S.C. § 1182(n)(1)(A) and 20 C.F.R. § 655.731(c). In addition, I affirm the Administrator's determination that it was proper under the circumstances of this claim to pierce the corporate veil of Priority 1 Software Solutions, LLC, and to hold Anthony Corradetti individually liable for the owed back wages.

ORDER

The notice of determination of the Regional Administrator dated August 16, 2005 is AFFIRMED.

It is hereby ORDERED that Respondents PRIORITY 1 SOFTWARE SOLUTIONS, LLC, and ANTHONY CORRADETTI, Individually and as President of PRIORITY 1

[17] Although Respondent does not argue that piercing the corporate veil is not appropriate in this matter on grounds that the doctrine should not be applied to limited liability companies, it is an issue addressed by the Administrator. The Administrator cites legal authority that notes that commentators agree that for purposes of piercing the corporate veil, an LLC would be treated like a corporation. See Hollowell v. Orleans Regional Hospital LLC, 217 F.3d 379, 385 at fn. 7 (citing Eric Fox, Piercing the Veil of Limited Liability Companies, 62 Geo. Wash. L.Rev. 1143, 1167-68 (1994)). I am persuaded by the Administrator's legal authority that piercing the corporate veil of Priority 1 is appropriate despite its status as a limited liability company.

SOFTWARE SOLUTIONS, LLC, pay $54,054 to the Regional Administrator to be distributed to Ali Batuk and Emrah Gozcu, in accordance with the Administrator's computations.

A

Janice K. Bullard
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within thirty (30) calendar days of the date of issuance of the administrative law judge's decision. *See* 20 C.F.R. § 655.845(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 20 C.F.R. § 655.845(a).

If no Petition is timely filed, then the administrative law judge's decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 655.840(a).