U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR,

PETITIONER,

v.

STUART A. JACKSON,

RESPONDENT.

ARB CASE NO. 00-068

ALJ CASE NO. 1999-LCA-0004

DATE: April 30, 2001

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1/]

Appearances:

For the Petitioner:
LuAnn B. Kressley, *U.S. Department of Labor, Washington, D.C.*

For the Respondent:
Stuart A. Jackson, *pro se, New York, New York*

FINAL DECISION AND ORDER

I. INTRODUCTION

This matter arises under the Immigration and Nationality Act (INA) H-1B visa program, 8 U.S.C.A. 1101(a)(15)(H)(i)(b) and 1182(n) (West 1999). The Administrator of the Wage and Hour Division ("Administrator") brought this enforcement action pursuant to 20 C.F.R. §655.835 to collect underpaid back wages from an H-1B employer due to Pier Francesco Pastori, an H-1B non-immigrant Italian citizen. The Administrative Law Judge ("ALJ") found the Administrator's claim for underpaid wages to be unenforceable. By this Order, and for the reasons set forth herein, we reverse the ALJ's decision.

[1/] This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

In *Administrator v. Native Technologies, Inc.*, ARB No. 98-034, ALJ No. 96-LCA-2 (ARB May 28, 1999), we described the workings of the H-1B program in some detail. Briefly, the INA of 1952, as amended in 1990 and 1991,[2/] among other things defines a class of nonimigrant aliens, known as "H-1B" workers, who may enter the United States on a temporary basis to work in "specialty occupations," or as fashion models of distinguished merit and ability. 8 U.S.C.A. §1101(a)(15); 20 C.F.R. §655.700(c)(1) (1998).

The H-1B program is limited, with restrictions on the number of visas issued in any fiscal year and a maximum six-year period of admission for the authorized H-1B visa holder. 8 U.S.C.A. §1184(g). An employer seeking to hire an alien in a speciality occupation on an H-1B visa must first obtain certification from the U.S. Department of Labor (**?**Department") by filing a Labor Condition Application for H-1B Nonimmigrants ("LCA"); only after the employer receives the Department's certification will the Immigration and Naturalization Service ("INS") approve the visa petition. 8 U.S.C.A. §1101(a)(15)(H)(i)(b)*; see* 20 C.F.R. Part 655, Subparts H and I.

Respondent Stuart Jackson is an attorney practicing law in New York City. In 1996, the State of New York Department of Labor ("NYDOL") received a letter, ostensibly signed by Jackson, requesting the prevailing wage for an associate attorney in a New York law firm.[3/] NYDOL advised Jackson, by facsimile, that the prevailing wage for that position was $43,700 per year ($860.00 per week). Shortly thereafter, the Department received an LCA requesting that Pastori be certified to work for Jackson as an associate. The LCA listed $43,700 as the prevailing wage designated by the NYDOL and as the rate of pay for the position. The request was approved and Pastori began working as an attorney for Jackson on or about October 26, 1996. However, from the time Pastori began working for Jackson until he returned to Italy on July 2, 1997, Jackson only paid Pastori $500.00 per week.

After investigating this matter, the Administrator determined that Jackson had underpaid Pastori and assessed Jackson $13,001.78 in back wages. Jackson objected and requested an administrative review of the Administrator's determination. The matter was referred to an ALJ for a hearing.

Pastori did not testify at the hearing. However, Jackson testified that he never intended to pay Pastori more than $500.00 a week and that he was unaware of any obligation to pay Pastori $860.00 per week because he signed the LCA without reading it. The ALJ found Jackson's testimony credible and reasoned that, in the absence of Jackson's knowing agreement to pay the prevailing wage, the Administrator's claim against him was unenforceable. This appeal followed.

[2/] Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (1991); Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1733 (1994).

[3/] The Administrator alleges that Jackson signed the request for prevailing wages. Administrator's Brief in Opposition to Petition for Review (Admin. Br.). Jackson has neither admitted, nor denied, that he signed the request.

II. JURISDICTION

We have jurisdiction pursuant to 20 C.F.R. §655.845.

III. STANDARD OF REVIEW

Under the Administrative Procedure Act, we have plenary power to review an ALJ's factual and legal conclusions *de novo*. *See* 5 U.S.C.A. §557 (b) (West 1996); *Masek v. Cadle Co*., ARB No. 97-069, ALJ No. 95-WPC-1, slip op. at 7 (ARB Apr. 28, 2000).

IV. DISCUSSION

The Administrator asserts that the LCA was complete, explicitly set out the wages required to be paid, and was signed by Jackson. Under these circumstances, the Administrator argues that Jackson cannot evade his obligations under the LCA by alleging that he did not read the document before signing it. We agree.

In general, individuals are charged with knowledge of the contents of the documents they sign – that is, they have "constructive knowledge" of those contents. *Consolidated Edison Co., Inc. v. U.S.*, 221 F.3d 364, 371 (2d Cir. 2000). Thus, Jackson's actual knowledge regarding his obligations under the LCA is immaterial because he had constructive knowledge of the document's contents.

Nevertheless, Jackson asserts he should not be bound by his signature because Pastori probably obtained it by slipping the LCA into a large stack of papers knowing that he routinely signed off on the documents in such stacks without reading them.[4/] According to Jackson:

> Pastori thus perpetrated a fraud not only upon Mr. Jackson but upon the United States as well, since the LCA was one of the documents that needed to be filed in order for Pastori to be granted the H-1B status he needed to work as a lawyer in this country. Because Pastori procured Mr. Jackson's signature on the LCA by dint of fraud, Pastori's H-1B status was also fraudulently procured, and Mr. Jackson was therefore never obligated to pay Pastori the wages to which an alien with valid H-1B status would have been entitled.

Respondent's Brief in Opposition to Petition for Review at 6.

The Administrator concedes that Jackson would not be bound by his signature if it were obtained by fraud. Admin. Br. at 13-14. However, the Administrator argues that Jackson did not establish fraud in this case.

[4/] Jackson testified that the signature on the LCA looks like his (Hearing Transcript at 53) and has never seriously contested that he signed it.

An allegation that a signature is not binding because it was obtained by fraud is in the nature of an affirmative defense. The party asserting the defense has the burden of proving it by a preponderance of the evidence. *See Contractors Realty v. Ins. Co. of North America*, 469 F.Supp. 1287 (S.D.N.Y. 1979). Jackson utterly failed to prove fraud.

Jackson has not asserted that Pastori made any misrepresentations whatsoever. Instead, Jackson merely asserts that Pastori took advantage of him by relying on his habit of signing documents without reading them. In our view, Jackson's failure to read the LCA before signing it was reckless, especially in light of the fact that he is an experienced attorney. Jackson cannot rely on his own negligence as a basis for relieving himself of his obligation to pay the prevailing wage.

Therefore, the ALJ's decision is **REVERSED.**

ORDER

Respondent Stuart A. Jackson shall pay to Petitioner, the Administrator, Wage and Hour Division, the amount of $13,001.78.

SO ORDERED.

CYNTHIA L. ATTWOOD
Member

RICHARD A. BEVERLY
Alternate Member