



Issue Date: 20 November 2002

CASE NO. 2002-LCA-16

In the Matter of:

KEDAR DHOPEHWARKER / SUMEDHA PATWARDHAN,
Prosecuting Parties,

vs.

ALPHASOFT SERVICES CORP.,
Respondent,

and

ADMINISTRATOR, WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR,
Party in Interest.

FINAL ORDER OF DISMISSAL

On April 15, 2002, the Administrator issued a Determination Letter to Alphasoft which concluded that Alphasoft failed to pay wages as required under 20 C.F.R. § 655.731(c). No interested party timely appealed the Administrator's Determination. However, on May 31, 2002, the Office of Administrative Law Judges docketed this matter on the basis of a misunderstanding that the employer had requested a hearing. On July 10, 2002, Alphasoft sent the Office of Administrative Law Judges a letter indicating that it did not request a hearing for the above-referenced matter, that it was complying with the Administrator's Determination Letter, and requested that the matter be dismissed. On July 6, 2002, Alphasoft provided the Administrator with proof of payment for all assessed back wages. On August 28, 2002, Judge Thomas M. Burke issued an Order of Dismissal in this matter at the request of Respondent and the Department of Labor. On September 9, 2002, Mr. Dhopeshwarker and Ms. Patwardhan, husband and wife, sent a letter to the Office of Administrative Law Judges and the Administrator alleging that Alphasoft failed to pay the assessed back wages as assessed in the April 15, 2002 Determination Letter. On October 2, 2002, Judge Burke issued an order vacating the August 28, 2002 dismissal.

On October 11, 2002, the Administrator filed a Motion For Reconsideration of the October 2, 2002 Order Vacating Dismissal on the following grounds: (1) the OALJ does not have jurisdiction

to hear an untimely appeal of an Administrator's Determination; (2) Section 212(n) of the Immigration and Nationality Act (8 U.S.C. § 1182(n)) (INA) and associated regulations at 20 C.F.R. § 655.800, *et seq* (H-1B program) do not confer upon the OALJ jurisdiction to enforce an H-1B matter once a final determination has been issued and the period for appeal by "any interested party" has lapsed; and (3) Alphasoft has fully complied with the relief contained in the Administrator's April 15, 2002 Determination Letter and no further action is warranted.

The Administrator's Motion for Reconsideration is granted, and this matter is dismissed. Neither party requested an appeal to the OALJ within 15 calendar days after the date of the Determination Letter as required under 20 C.F.R. § 655.820(d). Without a timely request for appeal by a party, the OALJ has no jurisdiction to initiate a proceeding. Because I have granted reconsideration and dismissed this matter on the first ground asserted by the Administrator, it is not necessary to address the Administrator's remaining two grounds.

Accordingly, the October 2, 2002 Order Vacating Dismissal is vacated, and this case is hereby dismissed with prejudice.

ALEXANDER KARST
Administrative Law Judge

AK:sp