**In the Matter of:**

**NEERAJA RAJAN,**

**COMPLAINANT,**

**v.**

**INTERNATIONAL BUSINESS SOLUTIONS, LTD.,**

**RESPONDENT.**

**ARB CASE NO. 03-104**

**ALJ CASE NO. 03-LCA-12**

**DATE: August 31, 2004**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Prosecuting Party Neeraja Rajan:***
**Rajan S. Ramaseshan*, Edison, New Jersey***

***For the Respondent International Business Solutions, Ltd.:***
**S. K. Gupta, Esq., Spevack & Cannan, P.A., *Iselin, New Jersey***

## FINAL DECISION AND ORDER

This case arises under the Immigration and Nationality Act, as amended (INA), 8 U.S.C.A. §§ 1101-1537 (West 1999 & Supp. 2004), and regulations at 20 C.F.R. Part 655, Subparts H and I (2004). Prosecuting Party Neeraja Rajan, an H-1B nonimmigrant computer programmer analyst, filed a complaint under the INA against her employer, Respondent International Business Solutions, Ltd (IBS), an information technology company. Ms. Rajan's spouse, Rajan Ramaseshan, acted as her representative. IBS now petitions for review of a Decision and Order (D. & O.) an Administrative Law Judge (ALJ) issued on April 30, 2003. The ALJ upheld Ms. Rajan's complaint. We modify the decision of the ALJ as explained below.

## JURISDICTION AND STANDARD OF REVIEW

The Administrative Review Board (ARB) has jurisdiction to review the ALJ's decision under 8 U.S.C.A. § 1182(n)(2) and 20 C.F.R. § 655.845. *See* Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the ARB the Secretary's authority to review cases arising under, inter alia, the INA).

Under the Administrative Procedure Act, the Board, as the designee of the Secretary of Labor, acts with "all the powers [the Secretary] would have in making the initial decision . . . ." 5 U.S.C.A. § 557(b) (West 1996), *quoted in Goldstein v. Ebasco Constructors, Inc.*, 1986-ERA-36, slip op. at 19 (Sec'y Apr. 7, 1992). The Board engages in de novo review of the ALJ's decision. *Yano Enterprises, Inc. v. Administrator*, ARB No. 01-050, ALJ No. 2001-LCA-0001, slip op. at 3 (ARB Sept. 26, 2001); *Administrator v. Jackson*, ARB No. 00-068, ALJ No. 1999-LCA-0004, slip op. at 3 (ARB Apr. 30, 2001). *See generally Mattes v. United States Dep't of Agriculture*, 721 F.2d 1125, 1128-1130 (7th Cir. 1983) (rejecting argument that higher level administrative official was bound by ALJ's decision); *McCann v. Califano*, 621 F.2d 829, 831 (6th Cir. 1980), and cases cited therein (sustaining rejection of ALJ's decision by higher level administrative review body).

## REGULATORY FRAMEWORK

The INA permits employers to employ nonimmigrant alien workers in specialty occupations in the United States. 8 U.S.C.A. § 1101(a)(15)(H)(i)(b). These workers are commonly referred to as H-1B nonimmigrants. Specialty occupations are occupations that require "theoretical and practical application of a body of highly specialized knowledge, and . . . attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." 8 U.S.C.A. § 1184(i)(1). In order to employ H-1B nonimmigrants, the employer must obtain certification from the United States Department of Labor after filing a Labor Condition Application (LCA). 8 U.S.C.A. § 1182(n). The LCA stipulates the wage levels and working conditions that the employer guarantees for the H-1B nonimmigrants. 8 U.S.C.A. § 1182(n)(1); 20 C.F.R. §§ 655.731, 655.732. After it secures the LCA, the employer petitions for and nonimmigrants may receive H-1B visas from the State Department upon approval by the Immigration and Naturalization Service (INS). 20 C.F.R. § 655.705(b). An employer violates the INA if, for employment-related reasons, it fails to pay an H-1B nonimmigrant who is in "nonproductive status." Employment-related nonproductive status results from factors such as lack of available work for the nonimmigrant or a nonimmigrant's lack of a permit or license. 8 U.S.C.A. § 1182(n)(2)(C)(vii); 20 C.F.R. § 655.731(c)(7). Furthermore, an employer violates the INA when it deducts from a nonimmigrant's wages filing fees that INS collects from the employer to process the H-1B petition. 8 U.S.C.A. § 1182(n)(2)(C)(vi)(II); 20 C.F.R. § 655.731(c)(10)(ii).

## ISSUES

Did the ALJ correctly conclude that IBS violated the INA by failing to pay Ms. Rajan wages that it agreed to pay under the LCA?

Did the ALJ correctly conclude that IBS violated the INA by requiring Ms. Rajan to pay a filing fee associated with the H-1B petition?

Should IBS pay a civil money penalty if it required Ms. Rajan to pay the filing fee?

## BACKGROUND

The ALJ has set forth the facts of the case in detail with citation to the case record. D. & O. at 2-5. Briefly, IBS engaged Ms. Rajan in a specialty occupation on an H-1B visa after securing authorization through an LCA.[1] IBS subsequently discharged Ms. Rajan after it failed to compensate her while in nonproductive status. Ms. Rajan complained to the U.S. Department of Labor's Wage and Hour Division, Employment Standards Administration, seeking back wages and reimbursement of $1,500 she paid to IBS, at its request, for the filing fee. After investigation, the Administrator found that IBS had violated the INA by failing to post notice of the LCA and failing properly to establish the prevailing wage rate. Prosecuting Party's Exhibit (PPX) 17.[2] The Administrator did not make findings regarding Ms. Rajan's complaint that IBS failed to pay her wages and charged her for the filing fee. Ms. Rajan then requested a hearing before an ALJ who found that IBS violated the INA by failing to compensate her while in nonproductive status (D. & O. at 5-9) and by assessing her money to pay the H-1B filing fee (*id.* at 9-11). *See* 8 U.S.C.A. §§ 1182(n)(2)(vi)(II), 1182(n)(2)(vii)(I); 20 C.F.R. § 655.731. The ALJ accordingly ordered IBS to pay Ms. Rajan back wages and to reimburse her for the money she had paid IBS for the fee. The ALJ remanded the case to the Administrator to determine whether to impose a civil money penalty for the filing fee violation. IBS petitioned for review of the ALJ's decision, raising numerous issues. *See* Respondent's Petition for Review (Petition) dated May 22, 2003. We address each issue in turn.

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[1] Between 1993 and 1999 Ms. Rajan worked in India and the United States as a Systems Analyst and Programmer. Her most recent experience was as a Technical Analyst for American Express between January 1998 and December 1999. She holds a Bachelor of Science Degree with a dual concentration in Computer Science and Electronic Engineering. *See* Prosecuting Party's Exhibit (PPX) 8; Employer's Exhibits (EX) A and L.

[2] The Administrator's determination lists violations of 20 C.F.R. §§ 655.731, 655.734, 655.805(a)(5), and 655.805(a)(16).

## DISCUSSION

1. Notice of Complaint

IBS argues that the ALJ erred by permitting Ms. Rajan to allege violations, for purposes of the hearing, that were not part of the Administrator's findings. Petition at 3 (Issue 1). The Administrator is not a party to the proceeding, nor has he participated as amicus curiae. 20 C.F.R. § 655.820(b)(1).

We have examined the record, and we fail to discern any procedural irregularities that would require reversal of the ALJ's decision. The record shows that the Wage and Hour Division documented Ms. Rajan's complaint on October 31, 2001, on ESA Form WH-4, the alleged violations being: "Employer failed to pay H-1B worker(s) for time off due to a decision by the employer (e.g., for lack of work)" and "Employer required H-1B worker(s) to pay all or any part of $500/$1000 filing fee." This documentation comports with the requirements of 20 C.F.R. § 655.806 that the complaint be written or, if oral, that the Wage and Hour official who receives the complaint reduce it to writing.

An applicable regulation states further that "[t]he Administrator, through investigation, shall determine whether an H-1B employer has [violated the INA]" and lists 16 separate classifications of violation, including those raised in Ms. Rajan's complaint. *See* 20 C.F.R. § 655.805(a). Here, the Administrator found violations other than those alleged by Ms. Rajan. Under the regulations, "[t]he complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an employer has committed violation(s)." 20 C.F.R. § 655.820(b)(1). Therefore, Ms. Rajan appropriately requested a hearing because the determination "[was] not all encompassing – in that it left out the violations that [the Rajans] believe[d] [had] been committed by the employer (IBS) on regulations that govern wages needed to be paid to a H-1B specialty worker." Request for Hearing dated January 10, 2003, at 1. She then described the violations specifically (*id.* at 1-2) and documented evidence supporting findings of violation. *Id.* at 2-4.

The ALJ assigned to hear the case scheduled a hearing for February 24, 2003, issuing a notice of hearing and pre-hearing order on January 17, 2003. Counsel for IBS requested clarification of the issues. The ALJ addressed the issues during a February 13, 2003 conference call with the parties. The ALJ is authorized to conduct these procedures under 29 C.F.R. § 18.29. In short, the ALJ accorded IBS notice of the issues and an opportunity to defend. Counsel for IBS filed a pre-hearing submission dated February 14 in which he listed failure to compensate Ms. Rajan when in nonproductive status and IBS's request for and receipt of the H-1B filing fee as issues.

2. Motion for Continuance

IBS argues further that the ALJ erred by failing to continue the hearing to permit it to subpoena the Wage and Hour Division investigator and his investigation file. Petition at 3-4 (Issues 2 and 3). IBS represents that it "had initiated the steps necessary to

have the ALJ issue a subpoena for the Investigator's testimony, but was unable to have it served prior to the hearing." Respondent's Brief at 24.

The record contains no written application for subpoenas or other evidence suggesting that the ALJ issued subpoenas. *See* 29 C.F.R. § 18.24(a). Indeed, it contains no reference to subpoenas whatever. The ALJ's Order issued following the February 13, 2003 conference call states merely that IBS's counsel requested a 45-day continuance of the hearing. Ms. Rajan objected to a continuance, and the ALJ denied the motion, citing 8 U.S.C.A. § 1182(n) and 20 C.F.R. § 655.835(c).[3] We conclude that the ALJ did not abuse his discretion by denying IBS's motion. 29 C.F.R. § 18.28 (continuances granted only in cases of prior judicial commitments, undue hardship, or other good cause). *See Robinson v. Martin Marietta Serv.*, ARB No. 96-075, ALJ No. 94-TSC-7, slip op. at 4 (ARB Sept. 23, 1996); *Malpass & Lewis v. General Elec. Co.*, 1985-ERA-38/39, slip op. at 6-11 (Sec'y Mar. 1, 1994).

3. Representation

IBS charges that the ALJ erred by permitting Mr. Rajan, a non-attorney and H-1B nonimmigrant alien, to represent his wife during the proceeding. Petition at 4 (Issue 4). IBS argues that Mr. Rajan is not qualified because he is not a United States citizen. IBS first requested Mr. Rajan's disqualification during the February 13, 2003 conference call, and the ALJ issued an Order disqualifying Mr. Rajan on February 14. Mr. Rajan requested reconsideration on February 18. The ALJ granted reconsideration and, on February 21, issued an order permitting him to represent Ms. Rajan. The hearing convened on February 24, 2003.

In addressing the representation of parties, the rules of practice and procedure for the Department of Labor Office of Administrative Law Judges provide that "[a]ny party shall have the right to appear at a hearing in person, by counsel, or by other representative . . . ." 29 C.F.R. § 18.34(a). The rules set out qualifications for attorneys, 29 C.F.R. § 18.34(g)(1); and, for "persons not attorneys," specify that "[a]ny citizen of the United States who is not an attorney at law shall be admitted to appear in a representative capacity in an adjudicative proceeding." 29 C.F.R. § 18.34(g)(2). Thus, any non-attorney who is a U.S. citizen "shall" be allowed to represent a party. As Ms. Rajan argues, however, the regulation does not foreclose an ALJ from permitting a non-citizen,

[3] The regulation states: "The date of the hearing shall not be more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the INA, no request for postponement shall be granted except for compelling reasons. Even where such reasons are shown, no request for postponement of the hearing beyond the 60-day deadline shall be granted except by consent of all the parties to the proceeding." The hearing in this case convened on February 24, 2003, which was 59 days from the date of the Administrator's determination. Order issued February 14, 2003, at 2.

non-attorney representational privileges.[4] *See* 29 C.F.R. § 18.29 (authority of ALJ to conduct fair and impartial hearings).

Conversely, the rules authorize an ALJ to deny a person the privilege to appear in a representative capacity. In particular, "[t]he administrative law judge may deny the privilege of appearing to any person, within applicable statutory constraints, *e.g.* 5 U.S.C. 555, who he or she finds after notice of and opportunity for hearing in the matter does not possess the requisite qualifications to represent others; or is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude." 29 C.F.R. § 18.34(g)(3). The regulations thus expressly permit ALJs latitude in terms of whom they will permit to represent a party. Consequently, while regulatory section 18.34(g)(2) provides that any non-attorney U.S. citizen "shall be admitted" to represent a party, the ALJ "may" deny the privilege in certain circumstances.

The ALJ ultimately recognized Mr. Rajan as the authorized representative of Ms. Rajan in part because the intent of the regulation "is not to negate the ability of spouses to represent each other in administrative proceedings." Order Granting Reconsideration issued February 21, 2003, at 1. After acknowledging Ms. Rajan's statement that she was 35 weeks pregnant, the ALJ stated: "Due to the fact that the Prosecuting Party will be in a delicate state of health in this matter, assistance by her spouse is uniquely warranted, despite his citizenship status." *Id.* The ALJ cited Mr. Rajan's "extensive educational background" as supporting "the determination that he is qualified to participate in this matter on behalf of his wife." *Id.*[5] The ALJ reiterated his ruling at the hearing. Hearing Transcript (T.) at 5-6. We find that the ALJ did not err in authorizing Mr. Rajan's representation and that, in any event, IBS has failed to demonstrate prejudice.

3. Credibility Findings

IBS alleges that Ms. Rajan was not credible. Petition at 4 (Issue 5). The ALJ credited her testimony, however, and discredited testimony that IBS technical director John Ayyachamy and IBS program analyst Ashish Dua gave.

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[4] The Rajans stated: "Further, we contend that though the regulations (29 C.F.R. § 18.34(g)(2)) speak only to a United States citizen, they do not 'negate' the possibility of a non-U.S. citizen, non-attorney, representing another party in adjudicated court proceeding of this nature. Especially so, if an application is submitted by such a person (non-attorney, non-U.S. citizen) to the Chief Administrative Law Judge before the proceeding." Motion for Reconsideration at 2. *See* 29 C.F.R. § 18.34(g)(2) (procedure for approval). The Rajans complied with this procedure.

[5] Mr. Rajan possesses three Masters Degrees in Business and Management from institutions in the United States and India.

Ms. Rajan testified that she reported to work in person at the IBS offices on April 4, 2001, and spoke with IBS human resources contact Sophia Samuel. Samuel informed her that although IBS had no job assignment for her currently, it would circulate her resume to clients and that she similarly should conduct a job search, referring any prospective clients to IBS to negotiate for her services. T. 101-107, 119. That Ms. Rajan did so is evidenced by numerous e-mails dated between April and November 2001. PPX 24-35. Ms. Rajan also testified that she contacted IBS every three or four days to check on job possibilities. T. 103-104. Samuel, who was her chief contact at IBS, did not testify. Ms. Rajan also maintained contact with an IBS recruiter. T. 126; PPX 22, 23. On two occasions, April 10 and May 18, 2001, Ms. Rajan sent updated resumes to IBS. PPX 22, 23. She continued to send her resume to potential clients for referral to IBS. T. 116-118.

In contrast, Ayyachamy testified that he was unaware that Ms. Rajan had reported for work. T. 145. Ayyachamy and Dua testified that they attempted unsuccessfully to contact Ms. Rajan by telephone in May or June 2001 to offer her an in-house employment project. T. 136-137, 184, 217-218. Ms. Rajan testified that she was not aware that IBS had attempted contact. T. 122.

The ALJ found that the record did not support the testimony of Ayyachamy and Dua, in particular their testimony that Ms. Rajan was not ready, willing, and able to work for IBS (T. 145, 250; EX G). D. & O. at 6. The ALJ found credible Ms. Rajan's testimony that she reported to work on April 4, 2001, noting that the record demonstrated that lack of work prevented IBS from assigning her a project. *See, e.g.*, Dua's e-mail in which he stated that "the market conditions are bad so we don't need really to rush" Ms. Rajan's employment. EX K at 1. The ALJ found unbelievable that Ms. Rajan "desired to live without an income during the time period relevant here, and would jeopardize her nonimmigrant status by not being able and ready for employment by [IBS]." D. & O. at 6. As evidence, the ALJ cited PPX 14, her "rather frantic" appeal to INS when she discovered that IBS had requested INS to withdraw her LCA. *Id.* The ALJ also found it unreasonable that Dua would not have attempted to contact Ms. Rajan by e-mail since they had communicated by that means previously (EX H, I, J, K; PPX 22, 23). D. & O. at 7. We agree with the rationale for these findings, and we adopt them.

4. Nonpayment of Wages

IBS argues that it was not required to pay Ms. Rajan wages because she abandoned her employment and thus was nonproductive voluntarily. Petition at 4 (Issue 6). With regard to an H-1B nonimmigrant, who is employed but not working, the regulations provide for circumstances where wages must be paid and circumstances where wages need not be paid. Specifically, if the H-1B nonimmigrant is not performing work and thus is in a nonproductive status because of lack of assigned work, lack of a permit or license, or some other employment-related reason, the employer is required to pay the wages due under the LCA. 8 U.S.C.A. § 1182(n)(2)(C)(vii); 20 C.F.R. § 655.731(c)(7)(i).

An employer need not pay wages, however, to H-1B nonimmigrants in nonproductive status due to conditions unrelated to employment which remove the nonimmigrants from their duties at their "voluntary request and convenience" or which render them unable to work. 20 C.F.R. § 655.731(c)(7)(ii). Examples of these conditions include touring the United States, caring for a relative who is ill, maternity leave, or a temporarily incapacitating accident. *Id.*

Here, Ms. Rajan's H-1B visa became valid on January 24, 2001. She departed the United States for India on February 6, 2001, however, in order to undergo surgery there. EX K.[6] After recovering from the surgery, she returned to the United States on April 2 and reported for work at IBS on April 4. IBS did not assign her work on that date or thereafter. The ALJ found that Ms. Rajan desired work with IBS and, after reporting on April 4, 2001, made considerable effort to secure it. The ALJ is correct that on April 4 Ms. Rajan's status changed from voluntarily nonproductive to nonproductive because of lack of assigned work. D. & O. at 6-7. Accordingly, we find that Ms. Rajan did not abandon her employment with IBS and is due back wages.

5. Back Wage Recovery

IBS argues that the ALJ erred in determining the beginning and end dates for Ms. Rajan's back wage award. Petition at 4 (Issues 7 and 8). The applicable provisions are 8 U.S.C.A. § 1182(n)(2)(C)(vii) and 20 C.F.R. § 655.731(c)(6) and (7)(ii). *See generally* 65 Fed. Reg. 80,110, 80,169-80,175 (Dec. 20, 2000) (H-1B interim final rule).

The ALJ determined that IBS's back wage liability commenced on the date that Ms. Rajan "enter[ed] into employment" with IBS. 8 U.S.C.A. § 1182(n)(2)(C)(vii)(I). Regulatory section 655.731(c)(6)(i) specifies that the date the H-1B nonimmigrant is considered to "enter into employment" means the date that the nonimmigrant "makes him/herself available for work or otherwise comes under the control of the employer, such as by waiting for an assignment, reporting for orientation or training, going to an interview or meeting with a customer, or studying for a licensing examination, and includes all activities thereafter." The ALJ found the "entered into employment" date to be April 4, 2001, when Ms. Rajan reported for work at IBS after returning from India.

IBS argues that its back wage liability commenced 60 days after April 4, 2001. It relies on 20 C.F.R. § 655.731(c)(6)(ii) for its argument. Although this regulation pertains to Ms. Rajan's circumstances, IBS has construed it incorrectly. Regulatory section 655.731(c)(6)(ii) refers to a period "beginning 60 days after the date the nonimmigrant becomes eligible to work for the employer" in the case of a nonimmigrant present in the United States, as was Ms. Rajan, on the date that INS approved the H-1B petition. The regulation provides further that the H-1B nonimmigrant is considered to be "eligible to

[6] Mr. Rajan apprised IBS of his wife's plans and progress on several occasions, and Dua assented to her delay in commencing work (EX H, I, K). D. & O. at 5-6.

work for the employer" upon the date of the employer's "need" set forth on the H-1B petition, or the date of adjustment of the nonimmigrant's status by INS, whichever is later. Here the date of need was December 15, 2000. Employer's Exhibit (EX) A at 12. Ms. Rajan's H-1B classification is listed as valid beginning January 24, 2001. EX B. The date of status adjustment (January 24, 2001) consequently post-dated the date of need (December 15, 2000), and any 60-day period had expired by the time Ms. Rajan entered into employment on April 4, 2001.

As for the end date of the back wage period, IBS argues that it discharged Ms. Rajan by letter dated September 14, 2001. Addressed to Ms. Rajan at an outdated address and signed by IBS human resources manager Sophia Samuel, the letter stated: "This is to notify you that IBS has cancelled your H1 B as of 17th September, 2001. Wish you Good Luck!!!" EX E. IBS notified INS of the discharge by letter dated September 28. Addressed to INS's Eastern Service Center and signed by Samuel, the letter stated with reference to Ms. Rajan: "The following candidate is not with International Business Solutions, Ltd. as of September 15, 2001." EX D.

Ms. Rajan testified that she never received the September 14 letter and became aware of her discharge during a telephone conversation with Samuel on October 30, 2001. The ALJ found that the back wage liability ended on January 3, 2002, the date of the letter sent by INS notifying IBS that INS had revoked Ms. Rajan's petition. The INS letter stated in relevant part: "It has now come to the attention of this Service that the beneficiary [Ms. Rajan] is no longer employed by you and you wish to withdraw your petition in behalf of the beneficiary. Therefore the approval of your petition is automatically revoked in accordance with 8 C.F.R. 214.2." EX F.

We disagree with the ALJ on this issue and find instead that the period of back wage liability ended on September 28, 2001, the date that IBS notified INS of Ms. Rajan's discharge. This finding comports with regulatory language. *See* 20 C.F.R. § 655.731(c)(7)(ii). The applicable portion of this regulation consists of two sentences. The first sentence states that payment of wages "need not be made if there has been a *bona fide* termination of the employment relationship." The second sentence states: "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))." The applicable INS regulation provides for "automatic revocation" of a petition, specifically: "The approval of any petition is automatically revoked if the petitioner goes out of business or files a written withdrawal of the petition." 8 C.F.R. § 214.2(h)(11)(ii) (2002). Under these regulations, the date of bona fide termination would be September 28, 2001, when IBS notified INS that it no longer employed Ms. Rajan and approval of the petition was revoked automatically. We accordingly adjust the ALJ's back wage award (D. & O. at 9) to reflect 25 weeks and three days or 12 bi-weekly pay periods and eight days. The computation follows: [12 x $1,480.77 = $17,769.24] + [8 x $148.64 = $1,184.64] = $18, 953.88.

6. Filing Fee

Finally, IBS charges that the ALJ erred by remanding the case to the Administrator for penalty assessment. While IBS conceivably could be questioning the ALJ's authority to remand the case (*See* Petition at 5 (Issue 9), IBS's brief makes clear that the challenge is to the ALJ's finding that IBS violated the INA prohibition against deducting the H-1B filing fee from the wages of a nonimmigrant. Respondent's Brief at 27-28. *See* 8 U.S.C.A. § 1182(n)(2)(C)(vi)(II); 20 C.F.R. § 655.731(c)(10)(ii). We discern no merit to this argument. The INA and implementing regulations prohibit employers from receiving and nonimmigrants from paying any part of the $500/$1,000 filing fee. The record establishes that Ms. Rajan paid IBS $1,500 for "H-1B processing" at the request of IBS.[7] PPX 10. Overwhelming evidence supports the ALJ's findings in this regard. D. & O. at 9-11. We accordingly adopt them. Furthermore, the INA permits the Secretary to impose a civil money penalty of $1,000 for each such violation. 8 U.S.C.A. § 1182(n)(2)(C)(vi)(III). As delegate of the Secretary, *see supra,* we assess a penalty of $1,000 against IBS.

## CONCLUSION

IBS violated the INA when it did not pay Ms. Rajan wages while in nonproductive status due to lack of work and when it required Ms. Rajan to pay it $1,500 associated with an H-1B petition filing fee. The decision of the ALJ hereby is **MODIFIED** to order payment to Ms. Rajan of back wages for the period April 4, 2001, through September 28, 2001, in the amount of $18,953.88. IBS is also ordered to reimburse Ms. Rajan for her payment of $1,500. Additionally, IBS is assessed a civil money penalty of $1,000.

**SO ORDERED.**

**OLIVER M. TRANSUE**
**Administrative Appeals Judge**

**WAYNE C. BEYER**
**Administrative Appeals Judge**

[7] The record also establishes that IBS paid INS only $610 for this fee. T. 151-152; EX A.