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U.S. Immigration and Nationality Law
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**DOL ALJ ADDRESSES H-1B WAGE- RELATED
ISSUES**

In Arramreddy v. IK Solutions, Inc., 2006-LCA-00020 (11/15/06),
A DOL Administrative Law Judge (ALJ) addresses "Benching" and
"Burden of Proof."

Pertinent H-1B regulations require that the employer pay the H-1B worker at the specified prevailing wage rate as soon as the worker "enters into employment" when he/she 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 on an interview or meeting with a customer, or studying for a licensing examination, and includes all activities thereafter."

Furthermore, "Even if the H-1B nonimmigrant has not yet 'entered into employment' with the employer . . . the employer that has had an LCA certified and an H-1B petition approved. . . " shall pay the nonimmigrant the required wage 60 days after the nonimmigrant becomes eligible to work for the employer if the nonimmigrant is already present in the U.S. on the date of approval.

Under its "no benching" provisions, the INA requires that an employer pay the required wage specified in the LCA even if the H-1B nonimmigrant employee is in a nonproductive status because of lack of assigned work or some other employment-related reasons. However, an employer need not pay wages to H-1B non-

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immigrants that are in nonproductive status due to conditions that remove the non-immigrants from their duties at their "voluntary request and convenience" or which render them unable to work, such as a requested leave of absence.

In this case, the ALJ reiterated the regulations that place the burden of proof on the employee to establish by a preponderance of the evidence that he "entered into employment." While holding that the employee in this case failed to establish the above, the ALJ further stated that a nonimmigrant who has not yet entered into employment is still entitled to be compensated based on the required wage 60 days after the date the nonimmigrant becomes eligible to work for the employer and the nonimmigrant was present in the U.S. on the date the petition was approved. However, the ALJ ultimately held that the employee's absence from work at the employer's office in this case to take care of his sister who had been in an accident in October 2005 was due to the voluntary choice of the employee and therefore, the employer is not required to pay for these non-productive periods when the nonimmigrant has made decision unrelated to conditions of employment which take him away from his duties at his convenience.

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