

Federal Court Decision Confirms H-1B Employees Have A Right To Remain In The US While H-1B Extension Application Is Pending

In a recent decision before the US Federal District court in Connecticut, the judge confirmed that the government may not arrest H-1B employees whose employers have timely-filed extension applications while adjudication remains pending. The decision in *El Badrawi v. United States* recognizes that a federal regulation allows an H-1B employee to continue to work for 240 days beyond the validity date of their H-1B status pending adjudication of their extension application. The court determined that "work authorization is part and parcel of their authorization to be in the country, not a separate matter". According to the decision, allowing the Government to initiate removal proceedings during this period would be unfair to employees and employers alike.

The plaintiff, a Lebanese national, was gainfully employed as a medical researcher when his employer requested an H-1B extension in early 2004, more than a month before his H-1B status expired. Though his employer paid a \$1,000 fee for premium processing of the application, the government never adjudicated it and refused to respond to requests for information. Nearly seven months after the request was filed, immigration agents arrested the plaintiff for allegedly "overstaying" his initial period of admission. He was placed in removal proceedings and detained for nearly two months.

In their amicus brief, AIC and AILA argued that 8 C.F.R. § 274a.12(b)(20), which provides for work authorization while a timely-filed extension application is pending, necessarily authorizes H-1B employees to remain in the United States. Accordingly, they cannot be arrested solely for staying in the country while extension applications are being adjudicated. With supporting declarations from three companies that rely on H-1B workers, the brief argued that arresting noncitizens with pending extension applications would threaten to disrupt key sectors of the U.S. economy and undermine the goals of the H-1B program.

In her decision, Judge Hall said the AIC-AILA brief "highlights the substantial interest that employers have in the administration of the H-1B visa program, the lack of notice provided by the regulation at issue, and the hardship that the government's proposed interpretation would impose upon them."

Judge Hall's ruling is a victory for the rule of law and for common sense," said Melissa Crow, Director of the American Immigration Council's Legal Action Center. "If H-1B employees can continue working while extension applications on their behalf are pending, it defies logic to argue that they can be arrested, detained and removed without notice."

Courtesy of American Immigration Lawyers Association (AILA) and American Immigration Council (AIC).