

Federal Court Decision Protects H-1B Employees from Wrongful Arrest

AIC Amicus Argues Employees Have Right to Remain While Extension Applications Pending

Released on Wed, Apr 13, 2011

Washington D.C. - A [recent ruling](#) from a federal judge in Connecticut confirmed that—as the American Immigration Council (AIC) and the American Immigration Lawyers Association (AILA) argued in an amicus brief—the government may not arrest H-1B employees for whom timely-filed extension applications remain pending. The decision in *El Badrawi v. United States*, by U.S. District Judge Janet C. Hall, correctly recognized that a federal regulation allows H-1B employees to continue working for 240 days pending the adjudication of their extension applications, and that “work authorization is part and parcel of their authorization to be in the country, not a separate matter.” Permitting the initiation of removal proceedings during this period would thus be unfair to employees and employers alike, according to the decision.

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.”

The plaintiff was represented by the Worker and Immigrant Rights Advocacy Clinic at Yale Law School and the Asian American Legal Defense and Education Fund.

###

For press inquiries contact Wendy Sefsaf at (202) 507-7524 or wsefsaf@immcouncil.org.

[View Release](#)