



Issue Date: 30 March 2006

Case No.: 2005-LCA-00035

In the Matter of:

Administrator, Wage and Hour Division,
Complainant,

v.

Skillsoft International, Inc. a/k/a Skillsoft, Inc.,
Employer.

CONSENT FINDINGS AND ORDER

Pursuant to 29 C.F.R. § 18.9 (1992), the parties to this action, prosecuting party, Administrator, Wage and Hour Division (“Administrator”), and Respondent Skillsoft International, Inc. a/k/a Skillsoft, Inc. (hereinafter “Skillsoft”) have negotiated and executed these Consent Findings and Order. These Consent Findings and Order constitute a full and final resolution between them of this action and of all issues raised by the Administrator’s Determination Letter issue to Skillsoft on June 23, 2005.

JURISDICTION AND PROCEDURAL HISTORY

1. This action arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at U.S.C. § 1101, *et seq.* (“the INA”), as amended by the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978, the Miscellaneous Technical Immigration and Naturalization Amendments of 1991, P.L. 102-232, 105 Sta. 1733 and the American Competitiveness and Workforce Improvement Act of 1998 (“ACWIA”), P.L. 105-277, 112 Stat. 2861-641. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by INA § 212(n)(2), 20 C.F.R. §§ 655.820-840.
2. The issues resolved by these Consent Findings and Order were identified initially during and investigation conducted by Wage and Hour covering the period from June 18, 2001, through June 30, 2004.

3. On June 23, 2005, Wage and Hour issued to Skillsoft a Determination Letter, attached hereto as Exhibit "A", identifying alleged violations of the H-1B provisions of the INA.
4. On July 1, 2005, within the time period provided by 20 C.F.R. § 655.820, Skillsoft filed a Request for Hearing with respect to the allegations of violations set forth in the Determination Letter.

GENERAL PROVISIONS

5. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.
6. The entire record forming the basis on which the Order is entered shall consist of the Determination Letter and attachments thereto, and these agreements and consents.
7. The parties to these Consent Findings and Order hereby waive all further procedural steps between themselves before the Administrative Law Judge.
8. The parties to the Consent Findings and Order hereby waive any right to contest the validity of these findings or of any Order entered in accordance herewith.
9. All violations alleged in the Determination Letter issued by Wage and Hour are and shall be deemed fully resolved by these Consent Findings and Order with regard to both the Respondent and the Prosecuting Party.
10. These Consent Findings and Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of these Consent Findings and Order shall be the date of approval by the Administrative Law Judge.

SPECIFIC PROVISIONS

11. Skillsoft willfully violated the INA, as amended, by willfully failing to pay wages at the required wage rate to three H-1B nonimmigrant workers (Exhibit B) in violation of 20 C.F.R. §§ 655.731(c) and 655.805(a)(2).
12. Skillsoft willfully violated the INA, as amended, by willfully misrepresenting a material fact on the LCA filed by Skillsoft for three H-1B nonimmigrant workers (Exhibit B) in violation of 20 C.F.R. §§ 655.730 and 655.805(a)(1).
13. Skillsoft violated the INA, as amended, by requiring or attempting to require an H-1B nonimmigrant to pay a penalty for ceasing employment prior to an agreed upon date in violation of 20 C.F.R. §§ 655.731(c)(10)(i) and 655.805(a)(12).

14. Skillsoft violated the INA, as amended, by failing to maintain documentation, as required by 20 C.F.R. §§ 655.731(b), 655.738(e), 655.739(i), and/or 655.760(c), and 655.805(a)(15).

A. Payment

15(a) Skillsoft is obligated by this Order to pay the total amount of \$150,000.00 in back wages due to three individuals, as set forth in Exhibit “B” to these Consent Findings, upon entry of this Order.

15(b) The back wage payment shall be made free and clear, within the meaning of 20 C.F.R. § 655.731(c)(2)(i).

15(c) Any sum not distributed to the H-1B nonimmigrant workers identified in Exhibit “B” or to their personal representatives after three years, because of inability to locate them or because of their refusal to accept such sum shall be deposited with the Treasurer of the United States as miscellaneous receipts.

16(a) Civil money penalties in the amount of \$46,000.00 were assessed against Skillsoft for various violations of the INA, as amended.

16(b) The Administrator hereby amends the civil money penalties to be a total of \$13,000.00, and Skillsoft hereby withdraws its contest to the amended civil money penalties.

16(c) Payments shall be in the form of a check from Respondent’s bankruptcy attorney trust account made payable to “Wage and Hour Division – Labor” and sent to the following address:

U.S. Department of Labor
Wage and Hour Division
Room 7M40
61 Forsyth Street, SW
Atlanta, Georgia 30303

B. Reporting and Enforcement

17. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.

18. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon filing with the Administrative Law Judge a motion for an order of enforcement and sanctions.

19. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to,

attorney's fees which may be available under the Equal Access to Justice Act, as amended.

20. Skillsoft shall comply with 20 C.F.R. §§ 655.730, 655.731, 655.805 and 655.760(c) in the future.
21. The U.S. Department of Labor's Employment and Training Administration and the Attorney General shall be notified of these violations.
22. These Consent Findings and Order shall constitute the final Administrative Order in this case.

IT IS SO ORDERED, ADJUDGED AND DECREED.

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Daniel A. Sarno, Jr.
Administrative Law Judge