

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 16 July 2004**

CASE NO.: 2004-LCA-24

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR  
DIVISION,  
Prosecuting Party,

v.

USBID, INC.,  
Respondent.

Appearances: Thomas C. Shanahan, Esq.  
For Prosecuting Party

Ronald M. Gaswirth  
For Respondent

Before: Stephen L. Purcell  
Administrative Law Judge

**DECISION AND ORDER APPROVING SETTLEMENT  
AND CANCELING HEARING**

This matter arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 U.S.C. § 1101, *et seq.* (“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 Stat. 1733 and the American Competitiveness and Workforce Improvement Act of 1998 (“ACWIA”), P.L. 105-277, 112 Stat. 2861-641. A formal hearing in this case is presently scheduled to commence on July 20, 2004, in Orlando, Florida. On July 14, 2004, pursuant to 29 C.F.R. § 18.9 (2003), the parties in this matter filed a document entitled “Consent Findings and Order” (attached hereto as Joint Exhibit A and incorporated herein by reference) with the Office of Administrative Law Judges. The parties have requested that the settlement embodied therein be approved.

Section 18.9 provides, in relevant part:

Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall . . . provide:

- (1) That the order shall have the same force and effect as an order made after full hearing;
- (2) That the entire record on which any order may be based shall consist solely of the complaint order of reference or notice of administrative determination (or amended notice, if one is filed), as appropriate, and the agreement;
- (3) A waiver of any further procedural steps before the administrative law judge; and
- (4) A waiver of any right to challenge or contest the validity of the order entered into in accordance with the agreement.

29 C.F.R. § 18.9(b). I find the Consent Findings and Order submitted by the parties conforms to the requirements of the regulation. The Administrator, Wage and Hour Division, United States Department of Labor and USBID, Inc. specifically agree that:

The issues resolved by these Consent Findings and Order were identified initially during an investigation covering the period August 23, 2001 through August 22, 2003.

A Determination Letter identifying violations of the H-1B provisions of the INA was issued to USBID by Wage and Hour on February 20, 2004.

USBID filed a request for hearing with the Office of Administrative Law Judges on March 3, 2004 with respect to the allegations set forth in the Determination Letter.

USBID nonwillfully violated the INA, as amended, by failing to pay wages as required in violation of 20 C.F.R. §§ 655.731 and 655.805(a)(2) with respect to Yangling (Helen) Xu.

USBID nonwillfully misrepresented a material fact on the LCA (ETA Case Number I-02340-0334703) in violation of 20 C.F.R. §§ 655.730 and 655.805(a)(1). Pursuant to 655.810(d)(1), the Attorney General will be notified that USBID is to be disqualified from approval of any petitions under Section 404 or Section 214(c) of the INA for a period of one year. This disqualification will not affect USBID's currently valid H-1B petitions.

USBID is obligated to pay back wages in the total amount of \$2,895.00 to Yangling (Helen) Xu, upon entry of this order.

Payment shall be in the form of a certified or bank check drafted payable to "Yangling (Helen) Xu or the Wage and Hour Division-Labor," and sent to:

Bank of America  
U.S. Department of Labor  
Wage and Hour Division  
P.O. Box 8465454  
Dallas, TX 75284-5454

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

Any sum not distributed to the employee named herein, or to her personal representative after three years, because of inability to locate her or because of her refusal to accept such sum shall be deposited with the Treasurer of the United States as miscellaneous receipts.

USBID is obligated by this order to pay civil money penalties in the amount of \$500 upon entry of this order. Payment shall be in the form of a certified or bank check 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, GA 30303

In the event that Respondent fails to make any payment required by this order, the entire amount of back wages and civil money penalties shall become due and payable immediately without further notice or demand by the Administrator. Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996 (Public Law 104-134) and other delinquent charges and administrative costs shall also be assessed. In the event of default, the Administrator and/or Secretary of Labor intends to pursue enforcement of the agreement and/or any additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit report agencies, private collection agencies, and/or the Department of Justice.

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.

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.

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.

USBID shall comply with 20 C.F.R. §§ 655.730 and 655.731 in the future.

These Consent Findings and Order shall constitute the final Administrative Order in this case.

I have carefully considered the facts involved in this case, the legal and factual questions in dispute, and the criteria set forth in 29 C.F.R. § 18.9. After careful evaluation, I find that the settlement embodied in the Consent Findings and Order is fair and in the best interests of the parties. I further find that the settlement was arrived at without duress, and only after full exploration by the parties of all issues in dispute and the legal and factual questions involved. Finally, I find the settlement is fair, reasonable, and adequate.

### **Order**

IT IS ORDERED that the settlement be, and hereby is, APPROVED.

IT IS FURTHER ORDERED that the formal hearing scheduled for Tuesday, July 20, 2004 at 9:00 a.m. in Orlando, Florida is hereby CANCELLED.

**A**

Stephen L. Purcell  
Administrative Law Judge

Washington, D.C.