



Issue Date: 30 September 2004

CASE NO.: **2004-LCA-00026**

In the Matter of

ADMINISTRATOR, WAGE AND HOUR DIVISION,
Prosecuting Party,

v.

YMCA OF COASTAL GEORGIA, INC.,
ISLANDS BRANCH,
Respondent.

DECISION AND ORDER APPROVING CONSENT FINDINGS

This case was brought pursuant to 20 C.F.R. § 655.820 et seq., as amended by the interim final regulations published by the Department of Labor on December 20, 2000, 65 Fed. Reg. 80110 et seq. (2000) to implement the H-1B provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101(a)(15)(H)(i)(B) and 1182(N) and in accordance with 29 C.F.R. Part 18 of the Rules of Practice and Procedure of the Office of Administrative Law Judges. A hearing was scheduled for August 20, 2004. However, on August 19, 2004, I was advised that the parties had agreed to a settlement and that a consent order would be sent to me within forty-five (45) days. Accordingly, I cancelled the hearing and allowed the parties until October 1, 2004, to submit the documentation.

On or about September 21, 2004, the parties submitted a Settlement Agreement and Consent Findings. The parties stipulate, to an entry of findings, as follows:

Pursuant to 29 C.F.R. § 18.9 (1992), the parties to this action, prosecuting party, Administrator, Wage and Hour Division ("Administrator") and Respondent YMCA of Coastal Georgia, Islands Branch (hereinafter "YMCA") have negotiated and executed these Consent Findings and Order. These Consent Findings and Order constitute a full and final resolution of this action and of all issues raised by the Administrator's Determination Letter issued to YMCA on March 11, 2004.

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 8 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 Stat. 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 an investigation conducted by Wage and Hour from March 29, 2003, through October 20, 2003.

3. On March 11, 2004, Wage and Hour issued to YMCA a Determination Letter identifying alleged violations of the H-1B provisions of the INA.

4. On April 2, 2004, outside the time allotted by 20 C.F.R. § 655.820, the YMCA 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 these 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.

11. These Consent Findings and Order shall fully and finally resolve all issues and claims that were raised, or which reasonably could have been raised, in the March 11, 2004, Determination Letter and all claims and issues of law and/or fact of which the Administrator had knowledge prior to the effective date of these Consent Findings and Order.

SPECIFIC PROVISIONS

12. YMCA violated the INA, as amended, by willfully failing to pay wages at the required wage rate to one H-1B nonimmigrant worker (Rumyana Mamulova), in violation of 20 C.F.R. §§ 655.731(c) and 655.805 (a) (2).

13. YMCA violated the INA, as amended, by failing to offer either equal benefits or equal eligibility for benefits or both in violation of 20 CFR §§ 655.731(c) (3) and 655.805(a) (2).

A. Payment

14 (a). The YMCA is obligated by this Order to pay back wages in the total amount of \$13,273.44 to Rumyana Mamulova.

14 (b) The back wages shall be paid in three installments. Respondent has paid \$1,000.00 toward back wages, thus, the total remaining back wages owed is \$12,273.44. No later than September 10, 2004, the YMCA shall make an initial payment of \$4,091.14. The remainder shall be paid in two equal installments of \$4,091.15, due on October 30, 2004 and November 30, 2004.

15. Payment shall be in the form of a certified or bank check made payable to the “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

The back wages will then be distributed to Rumyana Mamulova, for the net amount due after appropriate deductions for income tax and the employee’s share of F.I.C.A. YMCA shall remain responsible for the employer’s share of F.I.C.A. arising from or related to the back wages paid hereunder.

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

17. Any sum not distributed to Rumyana Mamulova or to her personal representative after three years, because of inability to locate the H-1B worker or because of her refusal to

accept such sum shall be deposited with the Treasurer of the United States as miscellaneous receipts.

18. Civil money penalties in the amount of \$1,250.00 were assessed against the YMCA for various alleged violations of the INA, as amended. The civil money penalties were amended to \$250.00, which has been paid in full.

19. In the event that the YMCA fails to make any payment in the time periods specified herein, the entire amount of unpaid monies 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 this agreement and/or any additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.

B. Reporting and Enforcement

20. 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.

21. 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.

22. 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.

23. YMCA shall comply with 20 C.F.R. §§ 655.731 and 655.805 in the future.

24. 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. The document signed by the parties is attached to this order.

ORDER

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

A

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/ccb
Newport News, Virginia

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. §655.845, any party dissatisfied with this Decision and Order may appeal to the Administrative Review Board, U. S. Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210, by filing a petition to review the Decision and Order. The petition for review must be received by the Administrative Review Board within 30 calendar days of the date of the Decision and Order. Copies of the petition shall be served on all parties and on the administrative law judge.