

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 29 July 2010**

Case No.: 2009-LCA-00021

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,

Complainant,

v.

SMARTSOFT INTERNATIONAL, INC.,

Respondent.

**DECISION AND ORDER APPROVING CONSENT FINDINGS**

This case arises under the H-1B visa program of the Immigration and Nationality Act of 1952 (Act), 8 U.S.C.A. § 1101, et seq, as amended, and its implementing regulations found at 20 CFR Part 655, Subparts H and I.

By correspondence dated March 11, 2009, and filed with the Office of Administrative Law Judges on March 17, 2009, the Administrator for the Wage and Hour Division, Employment Standards Administration, (Administrator), notified Respondent that a recent investigation under the H-1B provisions of the Act was completed and Respondent had committed two violations of the Act by (1) failing to pay wages as required; and (2) failing to comply with provisions of Subpart H or I of the Act in violation of 20 CFR §655.735(b)(3)(i) through (iii) by failing to employ H-1B workers in compliance with short term placement requirements. The Respondent was directed to pay \$1,708,496.02 in back wages to 196 specified non-immigrant H-1B workers and was directed to comply with the provisions of 20 CFR §§ 655.731 and 655.735(b)(3)(i) through (iii) in the future. No civil penalties were levied against the Respondent. On March 31, 2009, Respondent's original counsel filed a timely request for formal hearing with the Office of Administrative Law Judges.

On July 23, 2010, the Parties jointly filed Consent Findings and thereby stipulate, agree and consent, pursuant to 29 CFR § 18.9, to entry of findings as follows:

1. This action arises under the Immigration and Naturalization 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. 19733, 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 Section 212(n)(2), 20 C.F.R. §§ 655.820-840.
2. On March 11, 2009, the Administrator issued to Respondent a Determination Letter identifying alleged violations of the H-1B provisions of the INA.
3. Within the time period provided by 20 C.F.R. §655.820, Respondent filed a Request for Hearing with respect to the allegations of violations set forth in the Determination Letter.
4. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.
5. The entire record forming the basis on which this Order is entered shall consist of the March 11, 2009, Determination Letter and these agreements and consents.
6. The Parties to these Consent Findings and Order hereby waive all further procedural steps between themselves before the Administrative Law Judge.
7. 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.
8. The Parties waive any right to challenge or contest the validity of these Consent Findings and Order.
9. The Administrator hereby amends the Determination Letter issued to Respondent dated March 11, 2009, to state that back wages and interest in the total amount of \$997,732.79 are owed to the employees in the amounts specified in the attached Schedule “A.”
10. Without admitting the violations alleged, Respondent agrees to pay the total amount of \$997,732.79 in back wages and interest that the Administrator alleges are owed. To comply with this paragraph, Respondent will deliver to the individuals identified in Schedule “A” the amounts set forth therein. Respondent will distribute such amounts to the named employees or their personal representatives, less all legally mandated deductions, including income tax and employee’s share of F.I.C.A.. Respondent will make its best efforts to distribute such amounts to the named employees or to their representatives no later than August 1, 2011. For each employee so paid, Respondent will provide the Administrator proof of such payment in the form of a Form WH-58 signed by the individual to whom such amounts have been paid. Respondent will provide all proof of payment no later than August 15, 2011.

11. If Respondent is unable to pay or unable to submit proof of payment of any part of the total amount of \$997,732.79, as required by Paragraph 10 herein, Respondent will tender the amount remaining unpaid or unproven, less all legally mandated deductions, including income tax and the employee's share of F.I.C.A., to the Administrator on or before August 15, 2011. Respondent will simultaneously provide the Administrator with a schedule stating Respondent's employer I.D. number and the last known address and social security number for each employee identified on Schedule "A" remaining unpaid as of August 15, 2011.
12. The payment required by Paragraph 11, herein, will be in the form of a cashier's check or money order made payable to "Wage and Hour Division – U.S. Department of Labor." In the event of default by Respondent in making such payment, post-judgment interest will be assessed on any unpaid amount at the rate established pursuant to 28 U.S.C. § 1961.
13. All proof of payment required by Paragraph 10, herein, and any payment required by Paragraph 11, herein, will be sent to the following address:

U.S. Department of Labor  
Wage and Hour Division  
Room 7M40  
61 Forsyth Street, SW  
Atlanta, GA 30303
14. Any sum paid to the Administrator pursuant to Paragraph 11, herein, that is not distributed to Respondent's employees or their personal representatives after three years of receipt by the Administrator, because of inability to locate the employees or because of their refusal to accept such sums, will be posted with the Treasurer of the United States as miscellaneous receipts.
15. Respondent remains responsible for the employer's share of F.I.C.A. arising from or related to the back wages paid pursuant to this Consent Findings and Order.
16. Without admitting the violations alleged, Respondent withdraws its Request for Hearing filed in this matter.
17. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implantation 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. Respondent shall comply with 20 C.F.R. §655.731(c), "Satisfaction of Required Wage Obligation," in the future.
21. These Consent Findings and Order shall constitute the final Administrative Order in this case.

After review of the filed Consent Findings, this Administrative Law Judge finds that they are in compliance with 29 CFR § 18.9, are in the best interests of all the Parties, and adequately resolve all pending issues for this matter. Accordingly, **IT IS ORDERED** that the Consent Findings are **ADOPTED AND APPROVED** pursuant to the provisions of 29 CFR § 18.9(e)(11).

A

ALAN L. BERGSTROM  
Administrative Law Judge

ALB/jcb  
Newport News, Virginia

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within thirty (30) calendar days of the date of issuance of the administrative law judge's decision. *See* 20 C.F.R. § 655.845(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 20 C.F.R. § 655.845(a).

If no Petition is timely filed, then the administrative law judge's decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 655.840(a).