

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 03 September 2010

CASE NO.: 2010-LCA-00004

In the Matter of:

**ADMINISTRATOR, WAGE AND HOUR DIVISION,
U.S. DEPARTMENT OF LABOR,**
Prosecuting Party,

v.

PARTH CONSULTANTS, INC.,
Respondent.

CASE NO.: 2010-LCA-00003

In the Matter of:

RAHUL VISWANATH,
Complainant/Prosecuting Party,¹

v.

PARTH CONSULTANTS, INC.,
Respondent, and

**ADMINISTRATOR, WAGE AND HOUR DIVISION,
U.S. DEPARTMENT OF LABOR,**
Interested Party.

**DECISION AND ORDER APPROVING CONSENT FINDINGS
AND APPROVING HEARING REQUEST WITHDRAWAL**

The matters before the undersigned administrative law judge are a Settlement Agreement and Consent Findings in Case Number 2010-LCA-00004 and the request for withdrawal in Case Number 2010-LCA-00003. These proceedings arise out of the enforcement provisions relating

¹ As indicated in the Order Adopting Proposed Schedule of February 22, 2010, the parties previously advised that the Complainant had withdrawn his hearing request in Case Number 2010-LCA-00003; however, as the case is consolidated with Cast No. 2010-LCA-00004, these cases are being disposed of together.

to labor condition applications for H-1B visas of the Immigration and Nationality Act, as amended (“INA”), 8 U.S.C. § 1101 *et seq.* with implementing regulations appearing at 20 C.F.R. Part 655.800 *et seq.* Case No. 2010-LCA-00004 concerns Respondent’s appeal of the Administrator’s determination issued on October 27, 2009, pursuant to which the Administrator found a violation by Respondent and determined that Respondent owed back wages in the amount of \$148,058.69 to ten (10) H-1B nonimmigrants while Case No. 2010-LCA-00003 concerns Complainant Rahul Viswanath’s appeal of the amount of relief provided to him individually. The two cases were consolidated for hearing purposes by a Notice of Assignment, Notice of Hearing, Prehearing Order, and Order of Consolidation of November 17, 2009.

By correspondence of November 11, 2009, sent by facsimile, Complainant Viswanath sought to withdraw his request for a hearing based upon information he received from the investigating officer. The Administrator transmitted a copy of Mr. Viswanath’s request by facsimile of November 18, 2009. At a December 2, 2009 conference call, some of the issues presented by the pending case were discussed, including whether Mr. Viswanath would need to proceed separately in this matter or whether he would accept the Administrator’s calculations, and the Department of Labor investigator briefly addressed the calculations relating to Mr. Viswanath. A hearing scheduled for December 16 to 17, 2009, in Chicago was cancelled by Order of December 4, 2009, and the parties were ordered to confer and provide a status report. Mr. Viswanath had indicated that his only disagreement was the lack of wages during the first 45 days of his employment, from July 17, 2006 to September 15, 2006 (the bench period). In correspondence of December 16, 2009 from the Regional Solicitor’s Office to Mr. Viswanath, the Administrator clarified that the benching period was not included because it was outside of the investigation period (which started in 2007). By correspondence of December 21, 2009, Mr. Viswanath withdrew his appeal in Case No. 2010-LCA-00003. In the Joint Status Report of January 14, 2010, the parties indicated that the Complainant had withdrawn his hearing request in Case Number 2010-LCA-00003, and they provided a proposed schedule that was later amended. In an Order Adopting Proposed Schedule of February 22, 2010, the parties were advised that, although future proceedings would focus on Case Number 2010-LCA-00004, the parties should also address the appropriate disposition of Case Number 2010-LCA-00003 (Mr. Viswanath’s case).

On June 15, 2010, counsel for the Administrator, on behalf of both parties, submitted a “Settlement Agreement and Consent Findings in Case No. 2010-LCA-00004” (with attached Schedule), signed by counsel for Respondent and counsel for the Administrator [hereafter “Consent Findings”], which resolved the disputed matters in that case, resulting from an investigation covering the period from March 1, 2007 to April 30, 2009 through a settlement. The attached Schedule indicated the amount to be paid to nine employees, including Mr. Viswanath (in the amount of \$4,405.82) but not including Sanjay Savalia and including reduced amounts for some of the other employees, for a total amount of \$107,167.10. With respect to Mr. Viswanath’s case, in paragraph 10 of the Consent Findings, the Administrator and the Respondent recommended that his motion to withdraw his hearing request be granted. The terms of the Consent Findings are incorporated by reference herein.

On June 18, 2010, the undersigned issued an Order Requiring Response, asking the Administrator to explain the discrepancy between the ten individuals listed in the

Administrator's determination and the nine individuals listed in the Settlement and holding approval of the settlement in abeyance pending receipt of the requested information. In a response of June 30, 2010, the Regional Solicitor, on behalf of the Administrator, explained that documentation provided during the litigation established that the omitted employee, Sanjay Savalia, was on vacation during the period in which he was allegedly not paid; accordingly, the request for back wages for him was withdrawn.

On June 22, 2010, Complainant Viswanath sought to collaterally challenge the settlement based upon alleged computation errors and therefore effectively negate his withdrawal request in Case Number 2010-LCA-00003. As a review of Mr. Viswanath's submissions reflected that he was under the mistaken impression that the amended computations (attached to Mr. Viswanath's correspondence but not previously of record) were in his favor, the undersigned scheduled a conference call between the parties on August 31, 2010. In actuality, the amended computations would have resulted in his receipt of a lesser amount. While the amended computations included a fee of \$1500 (apparently a finder's fee payable to a third party), the violation relating to the fee (Violation No. 2) was withdrawn by the Administrator under the settlement. Accordingly, in lieu of pursuing his claim independently under Case Number 2010-LCA-00003, Mr. Viswanath withdrew his challenge to the settlement, which request was unopposed, and he verified that in a facsimile communication of August 31, 2010. His request for withdrawal will be granted.

Upon review of the Consent Findings, I find its terms to be adequate, and I also find that it would be appropriate to dismiss Mr. Viswanath's individual case pursuant to his unopposed request to withdraw his hearing request. Accordingly, I have signed the Consent Findings, and I now make the following Findings and issue the following Order:

FINDINGS

1. All issues in contest between the Administrator and Respondent have been resolved by the Consent Findings.
2. This Decision and Order incorporating the Consent Findings shall have the same force and effect as an Order made after a full hearing.
3. The entire record on which this Decision and Order is based shall consist solely of the Consent Findings and the October 27, 2009 Determination Letter issued by the District Director on behalf of the Administrator.
4. The parties have waived any further procedural steps before the undersigned administrative law judge and the Administrative Review Board as well as any rights to challenge or contest the validity of this Decision and Order.
5. The Consent Findings comport in all material respects with the requirements of 29 C.F.R. § 18.9, as applicable pursuant to 29 C.F.R. § 655.825.
6. All of the findings, terms and conditions of the Consent Findings are incorporated by reference herein.

ORDER

IT IS HEREBY ORDERED that the Consent Findings be, and hereby are, **APPROVED**, and the parties shall comply with the terms thereof;

IT IS FURTHER ORDERED that Complainant's request to withdraw his hearing request in Case No. 2010-LCA-00003 is **GRANTED** and Case No. 2010-LCA-00003 is **DISMISSED**; and

IT IS FURTHER ORDERED that Case No. 2010-LCA-00004 be, and hereby is, **DISMISSED WITH PREJUDICE**; and each party shall bear his or its own costs, expenses, and attorney fees incurred in connection with this action.

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PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.