



Issue Date: 13 January 2011

Case No.: 2010-LCA-19

In the Matter of
ADMINISTRATOR,
WAGE & HOUR DIVISION

v.

HEARTLAND EMPLOYMENT SERVICES, INC.
d/b/a HCR MANORCARE, and
PAUL A. ORMOND, PRESIDENT/CHIEF EXEC. OFFICER
Respondents.

**DECISION AND ORDER APPROVING SETTLEMENT
AGREEMENT AND CONSENT FINDINGS**

This proceeding arises under the H-1B provisions of the Immigration and Nationality Act of 1952, as amended by the Immigration Act of 1990, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, and the American Competitiveness and Workforce Improvement Act of 1998, found at 8 U.S.C. §§ 1101, *et seq.*, 8 U.S.C. § 1101 (a)(15)(H)(i)(b) (hereinafter referred to collectively as the "INA"), and its implementing regulations, which are located at 20 Part 655, Subparts H and I. The Prosecuting Party, Administrator, Wage and Hour Division, United States Department of Labor ("Administrator"), determined that Heartland Employment Services, LLC, doing business as HCR ManorCare, and Paul A. Ormond, President and Chief Executive Officer, Respondent ("Heartland Employment Services" or "Respondent"), failed to pay wages as required for productive work and nonproductive time; misrepresented a material fact on the Labor Condition Application; failed to provide notice of filing of the LCA's as required; failed to accurately specify on the LCA, and required and attempted to require a penalty for ceasing employment prior to an agreed date. On March 26, 2010, the Administrator's representative issued a Determination to Respondent, Heartland Employment Services, detailing its findings with respect to the above violations. The Respondent filed a timely request for hearing on April 9, 2010. Jurisdiction over these proceedings is vested in the Office of Administrative Law Judges by INA § 212(n), 8 U.S.C. § 1182(n) and 20 CFR Part 655.800, *et. seq.*, with respect to Respondent's request for a hearing concerning the alleged violations of the provisions of § 1182(n) of the INA.

A Notice of Hearing and Pre-Hearing Order was issued on May 13, 2010 setting this case for hearing on October 5, 2010 in Cleveland, Ohio. On September 9, 2010, an amended Notice of Hearing and Pre-Hearing Order was issued resetting the hearing for November 9, 2010, and on October 13, 2010 an Order was issued rescheduling the hearing for January 5, 2011. On

January 3, 2011, the parties submitted a Settlement Agreement and Consent Findings. The agreement is signed by Sandra Kramer, counsel for the Prosecuting Party, and by J. Neil Grindstaff, counsel for Respondent, Heartland Employment Services. In the Consent Findings, the parties have accepted certain obligations and agreed to specific actions which resolve all existing issues.

ORDER

Upon review of the record and the terms of the parties' consent findings, I find that the terms of the settlement are fair and reasonable. Accordingly, IT IS HEREBY ORDERED that:

1. This Decision and Order shall have the same force and effect as one made after a full hearing on the merits.
2. The entire record on which this Decision and Order is based consists solely of the Administrator's Determination Letter and the Settlement Agreement and Consent Findings executed by the parties.
3. The parties are hereby deemed to have waived any further procedural steps before the undersigned or the Secretary of Labor, as appropriate, regarding the matters which are the subject of their Settlement Agreement.
4. Any rights to challenge or contest the validity of this Decision and Order entered into in accordance with the Settlement Agreement and Consent Findings are hereby waived.
5. The Determination Letter, and the parties' Settlement Agreement and Consent Findings, together with this Decision and Order, shall constitute the final administrative findings and order in this case.
6. The hearing scheduled for January 5, 2011 in Cleveland, Ohio was cancelled.

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JOSEPH E. KANE
Administrative Law Judge