



Issue Date: 20 September 2011

In the Matter of

ADMINISTRATOR,
WAGE AND HOUR DIVISION, et al.,
Prosecuting Parties,

Case No.: 2011-LCA-00026

v.

BOARD OF EDUCATION of
PRINCE GEORGE'S COUNTY,
Respondent.

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT

This matter arises under the H-1B provisions of the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101, as amended by the American Competitiveness and Workforce Improvement Act of 1998, 8 U.S.C. §§1101(a)(15)(H)(i)(b), 1154, 1182(n), and 1184(c), and the implementing regulations found at 20 C.F.R. Part 655, subparts H and I (“H-1B program”). The INA and the regulations establish an H-1B Labor Condition Application (“LCA”) program for aliens who come to the United States temporarily to perform services in a “specialty occupation,” as defined in section 214(I)(1) of the INA. *See* 8 U.S.C. §1101(a)(15)(H)(i)(b).

After conducting an investigation, the Administrator¹ of the Wage and Hour Division issued a determination on April 4, 2011 that Respondent Board of Education of Prince George’s County (“Board” or “Board of Education”) committed numerous violations of the INA, specifically: (1) willful failure to pay wages as required, (2) failure to pay wages as required, and (3) failure to maintain documentation as required. All violations were related to workers in the Prince George’s County Public Schools who had been granted H-1B nonimmigrant visas.² The Administrator proposed a civil money penalty of \$1,740,000.00 and found that the Board owed

¹ The individual currently leading the Wage and Hour Division has been referred to variously as the “Acting Administrator” and the “Deputy Administrator” in the pleadings. As the regulations refer to the “Administrator,” and to minimize confusion, that person will be referred to as the “Administrator.” The initial determination was made by the Administrator’s representative, the District Director of the Baltimore office of the Wage and Hour Division.

² Many of the briefs received in this matter refer to the H-1B workers as “teachers”; however, the initial determination of the Administrator and the settlement agreement refer to H-1B “workers.” Although the bulk of the 1,044 H-1B workers who were identified in this matter likely were teachers, I cannot say on the existing record whether all of them are teachers, or whether some are in another category such as administrative personnel or other staff. Accordingly, they will be referred to as “workers” in this Decision and Order.

back wages to 1,044 of its H-1B nonimmigrant workers in the amount of \$4,222,146.35.³ In addition, the Administrator proposed that the Board be debarred from sponsoring H-1B nonimmigrant visa applications for a period of at least two years based on the finding that the Board's failure to pay required wages was willful. On April 28, 2011 the Board objected to the Administrator's determination and requested a hearing, and also requested assignment of a settlement judge. When counsel for the Administrator and the Board were contacted by my staff regarding the timing of settlement proceedings, they indicated that they were pursuing settlement and requested that this Office defer appointment of a settlement judge. The Board's request for hearing was docketed in this Office and assigned Case Number 2011-LCA-00026.

In addition to the Board, six individual H-1B workers in the Prince George's County public schools objected to the Administrator's determination and requested hearings. Those cases were assigned OALJ Case Numbers 2011-LCA-00027 through -00032. All six individuals objected to the proposed debarment. Individual prosecuting party Makarand Bidwai (Case No. 2011-LCA-00029) additionally objected to the Administrator's determination for failure to address his allegation that he was the victim of retaliation by the Board for raising concerns about the Board's H-1B program. By Order dated June 24, 2011, all seven cases were consolidated.

Under cover of letter dated July 7, 2011, the Administrator and the Board of Education submitted a settlement agreement in Case Number 2011-LCA-00026 for review and approval. In accordance with my June 24 order, those parties had contacted all of the individual prosecuting parties in the course of settlement discussions. The Administrator and the Board represented that all of the individual prosecuting parties objected to debarment and that Mr. Bidwai was seeking additional remedies, and that none of the individual prosecuting parties joined in the request for approval of the settlement agreement.

Objections to the proposed settlement were submitted by all individual prosecuting parties. In addition, I approved amicus curiae status for the Pilipino Educator Network and Richard J. Douglas, Esq., each of whom submitted comments for consideration.

The following documents have been submitted by the parties and by amici curiae, and I have considered all of them in reaching my decision in this matter:

1. Settlement agreement;
2. Opposition of prosecuting parties Apolinario F. Sandoval, Jennifer V. Sandoval, Dolapo Popoola, and Charmaine Beharie, submitted by counsel under cover letter dated August 12, 2011;
3. Opposition of prosecuting party Makarand Bidwai, dated August 12, 2011;
4. Opposition of prosecuting party Maria Angelica V. Ariston dated August 12, 2011, and supporting documents submitted on August 25, 2011;
5. Motion *Pro Bono Publico* for Leave to Be Heard as Amicus Curiae of Richard J. Douglas, Esq., dated July 25, 2011;

³ The amount originally owed to the workers was determined to be \$4,393,566.35, of which the Board had repaid \$171,420.00 at the time of the Administrator's determination.

6. Corrected Reply of the Board of Education to the opposition brief of Maria Angelica V. Ariston;
7. Opposition of amicus curiae Pilipino Educators Network dated August 31, 2011;
8. Reply of the Administrator dated September 9, 2011.

Terms of the Settlement Agreement

In pertinent part⁴, the terms of the settlement agreement include:

- (1) payment of wages in the amount of \$4,222,146.35 to the 1,044 workers who were identified in the Administrator's determination of April 4, 2011, in the amounts determined by the Administrator at that time to be owed;
- (2) payment of a civil penalty in the amount of \$100,000, conditioned on a two-year debarment period (should the Board submit any petition in support of an employment-related visa during the two-year debarment period, they will be liable for the full penalty initially proposed); and
- (3) agreement to a two-year debarment period in which (a) the Department of Homeland Security will not approve petitions filed by the Board under sections 204 or 214(c) of the INA, and (b) the Employment and Training Administration will invalidate the Board's labor condition application(s) under Subparts I and H of 20 C.F.R. part 655 and will not accept for filing any application or attestation submitted by the Board under 20 C.F.R. part 656 or subparts A,B,C,D,E,H, or I of Part 655, beginning on the date of this Decision and Order.

Objections

The major objections⁵ by the individual prosecuting parties and amici curiae are summarized as follows:

- Because no record has been developed, there is no basis for a finding that the Board's violations were willful, and therefore debarment is inappropriate;
- Debarment is manifestly inequitable because it will deprive the H-1B workers of their lawful status to stay and work in the United States and to obtain legal permanent resident status through employment with Prince George's County Public Schools;
- The monetary aspects of the settlement do not provide a full reimbursement for fees unlawfully charged to the workers;
- Reduction of the civil penalty from \$1,740,000 to \$100,000, conditioned on the two-year debarment period, is an abuse of discretion because of its failure to consider the impact on the H-1B workers and prevents them from obtaining legal permanent resident status through their employment with Prince George's County Public Schools;

⁴ There are numerous additional provisions in the settlement agreement, but no objections have been raised to them.

⁵ Additional objections by the various individuals and amici curiae that are not summarized here have nonetheless been considered; they have not been pressed, and I find that they are without merit.

- The settlement agreement fails to consider, let alone protect, the interests of the H-1B workers;
- Workers who are not parties to the settlement agreement have been denied due process with respect to a settlement that effectively deprives them of their livelihood, homes, and future aspirations;
- The Board should be equitably estopped from voluntarily agreeing to debarment based on their conduct in assuring H-1B workers that they would work to extend the workers' visas and to assist them in obtaining legal permanent resident status;
- The Board should be barred by the doctrine of promissory estoppel from agreeing to debarment based on its clear and definite promise that the H-1B workers would be permitted to apply for permanent residency, and that the Board would continue to employ them and process their requests for visa renewal;
- Approval of the settlement agreement would result in the immediate discharge of numerous workers, causing an immediate adverse impact on the Prince George's County school system.

The objectors suggest that the settlement agreement should be modified so that debarment applies only to persons who are not currently H-1B workers in Prince George's County Public Schools, and that as to current H-1B workers, the Board should be permitted to continue sponsorship of visa extensions and assistance with applications for legal permanent residency. In addition, individual prosecuting party Maria Angelica V. Ariston requests disapproval of the settlement agreement and a hearing on the actual fees that were unlawfully charged to her.

Discussion

Effect of Objections

At the outset, I must determine whether non-parties to a settlement agreement have the right under the INA and its implementing regulations to object to its terms. The Pilipino Educators Network analogizes this settlement agreement to a settlement agreement in a class action lawsuit, in which a court considering a settlement must give notice of the settlement to class members and give them the opportunity to object. This matter, however, is not remotely the same as a class action. A class action is governed by the provisions of Rule 23 of the Federal Rules of Civil Procedure. The threshold determination for class certification is whether the class is so numerous that joinder of all class members is impracticable. Fed. R. Civ. P. 23(a)(1). In this case, all of the affected H-1B workers were identified and included in the Administrator's initial determination that violations had been committed. In addition, Fed. R. Civ. P. 23 requires that all class members be notified of class certification and of any proposed settlement entered into by the class representative. In the present matter, all affected workers were notified of the Administrator's determination and given the opportunity to request a hearing. They were therefore provided with the opportunity for full participation in these proceedings. Thus the risks that Rule 23 seeks to minimize – the potential that an individual may be included in settlement of a claim when he or she lacked knowledge either of the claim or of the settlement – are not present in this case, when the workers had actual notice of the Administrator's determination and their right to participate.

Furthermore, the regulations pertaining to this matter govern the roles of the various interested parties. In this case, the Administrator determined that the Board violated the INA in a number of ways. Thus, under the applicable regulation, “the Administrator *shall be* the prosecuting party and the employer shall be the respondent.” 20 C.F.R. § 655.825(b)(2) (emphasis added). The Administrator is acting as the prosecuting party in the lead case (2011-LCA-00026), and the individuals identified as prosecuting parties in the other cases are precluded by the regulations from doing so. Accordingly, I am not required to reject or to modify the proposed settlement agreement merely because the individual workers involved in 2011-LCA-00027 through 00032 object to it.

Based on the foregoing, I conclude that the considerations in play in settling class actions are inapposite here, and I conclude that the objections by the individual prosecuting parties and the amici curiae do not require disapproval of the settlement agreement. I will, however, take the objections into account when determining whether the settlement agreement is satisfactory in form and substance, as required by 29 C.F.R. § 18.9.

Payment of Wages

Ms. Ariston objects to the provisions for paying the H-1B immigrants the full amount determined by the Administrator to be owed to them for the Board’s failure to pay required wages. In her particular case, the Board has agreed to pay \$2,695.00 in back wages; however, the method for calculating the back wages was not stated in either the Administrator’s determination or the settlement agreement. Ms. Ariston contends that she paid over \$12,000 in connection with her initial visa and a visa extension in 2006. In support of her contention, Ms. Ariston submitted a copy of an agreement she signed with Arrowhead Manpower Resources, Inc., a placement agency located in the Philippines, as well as a sworn statement setting forth her expenses. She argues that the proposed settlement amount of \$2,695.00 does not fully reimburse her for her costs of obtaining her position with Prince George’s County Public Schools.

Under 20 C.F.R. § 655.731(c)(9)(iii), the employer is responsible for the payment of the fees associated with filing labor condition applications and H-1B applications, as well as requests for extensions of H-1B status. In addition, the employer is responsible for payment of any fee required under Section 214(a) of the INA. 20 C.F.R. § 655.731(c)(10)(ii). Many of the costs paid by Ms. Ariston do not appear to be associated with filing any applications or requests for extension, or related to the fee required under Section 214(a) of the INA. The bulk of the costs she identifies were related to the services provided by Arrowhead on her behalf, rather than to the costs of obtaining permission to work in the United States. The costs incurred by Ms. Ariston for services provided to her by Arrowhead are not recoverable.

On the other hand, no combination of the expenses identified by Ms. Ariston totals \$2,695.00, the amount that the Board has agreed to pay her. Based on this record, it is not possible to determine the precise amount to which she is entitled. Nonetheless, that uncertainty is inherent in settlement agreements, which represent a compromise between opposing positions; a settlement agreement need not provide full relief to any party to it. Accordingly, Ms. Ariston’s objection on the basis that she will not be fully reimbursed is therefore overruled.

Civil Penalty

Under the agreement, the Board has agreed to pay, and the Administrator has agreed to accept, \$100,000 as a civil penalty for the violations determined by the Administrator. That amount is reduced from the initial civil penalty proposed, \$1,740,000, and the amount is subject to several conditions. The condition objected to is that the Board agrees not to file any employment-based petitions pursuant to Sections 204 or 214(c) of the INA during the debarment period. The objector argues that the condition – not to file any employment-based visa petitions – fails to consider the impact on the H-1B workers and prevents them from obtaining legal permanent resident status through their employment with Prince George’s County Public Schools. This objection, however, is based on at least two assumptions that cannot be relied upon for purposes of settling this matter. First, no nonimmigrant worker has an entitlement to legal permanent resident status, regardless of an employer’s intent to assist him or her in obtaining it. Second, even under the Board’s policies, not all H-1B workers in Prince George’s County Public Schools would have been sponsored for legal permanent resident status in the absence of the debarment agreement. Thus, the argument against approval of the reduced civil penalty with the condition to refrain from filing employment-based visa petitions is based on unrealistic assumptions and on speculation, and the objection is overruled.

Debarment

The Board’s agreement to be debarred from filing employment-based petitions for a period of two years after the date of this Decision and Order is by far the most contentious provision of the settlement agreement. Understandably so: by prohibiting the Board from filing any employment-based petitions under the INA, including petitions for extensions of H-1B visas, the debarment provisions ensure that a large number of workers, some of whom have been employed for six years with Prince George’s County Public Schools, will no longer be eligible for employment in the United States. Many workers expended a great deal of money and time to obtain the proper credentials to be hired in Prince George’s County, uprooted their families, and moved many thousands of miles in order to teach in this country. It is undisputed that as a group the affected workers provided excellent services to their employer and to their students. Hoping to find a way to stay in the United States permanently, they are notably apprehensive about the prospect of being forced to leave immediately upon expiration of their current visas. They have, therefore, raised a panoply of objections to the debarment provision of the settlement agreement.

1. Undeveloped Record

Several of the objectors argue that because no record has been developed, there is no basis for a finding that the Board’s violations were willful, and therefore debarment is inappropriate. This objection is without merit.

Under the regulations, an employer who commits a willful failure to pay required wages is subject to debarment for a period “of at least two years.” 20 C.F.R. §§ 655.810(d)(2) and 655.810(b)(2)(i). This remedy is authorized after a finding that the violation has been committed. 20 C.F.R. § 655.810, and may be imposed by the Administrator (*id.*) or, if the

employer requests a hearing, by an administrative law judge. 20 C.F.R. § 655.840(b). Because of the posture of this case – submission of a settlement agreement for review and approval – no evidentiary record has been developed. None is required, however, for settlement. The parties permissibly evaluated the risk of proceeding to a hearing, and the risk included imposition of a period of debarment greater than two years. The Board permissibly determined that it would agree to a two-year debarment period rather than take the risk of a longer one. Accordingly, this objection is overruled.

2. Failure to consider the interests of the H-1B workers

The objectors argue that the settlement agreement should be disapproved because it fails to consider, let alone protect, the interests of the H-1B workers. To the contrary, the parties have clearly considered the interests of the workers. Over a thousand workers will be paid the wages determined to be owed to them, in the full amounts determined by the Administrator to be owed. Two workers will be paid additional substantial amounts for “benching” time. All workers are protected from retaliation for their participation in the Administrator’s investigation. The parties have agreed to take no action to affect visas that have already been issued, but only to refrain from filing petitions for extensions or future visas for the debarment period. Although the H-1B workers are dissatisfied with the agreement, the parties have clearly considered their status in reaching the agreement.

The argument that the settlement agreement does not protect the interests of the H-1B workers is somewhat more compelling. Nonetheless, as discussed above, the settlement agreement does indeed protect the interests of the workers with respect to the wages owed to them as well as their interest against retaliation. The objectors apparently believe that the settlement agreement must protect them from the adverse effects of debarment; however, they have not identified any authority, and I have found none, for the proposition that the parties to a settlement agreement must protect the interests of other interested parties. Accordingly, this objection is overruled.

3. Denial of Due Process

The Pilipino Educators Network argues that the workers were denied due process with respect to the debarment provisions of the settlement agreement. The argument is based on the class-action considerations that I rejected above, and I reject them here for the same reasons. Additionally, PEN argues that the individual prosecuting parties were given only a short time to participate in settlement discussions, and that the other workers who did not request hearings were given no opportunity to participate, and that all workers were therefore denied due process.

With regard to the workers who did not request hearings, their failure to do so was the reason that they did not participate in the settlement process. Had they requested hearings, as six of their colleagues did, they would have been given an opportunity to participate in settlement negotiations. All workers were given notice of the Administrator’s determination and the opportunity to request hearings, and by failing to do so they waived any right to participate in settlement discussions.

With regard to the workers who did request hearings – the six individual prosecuting parties – each was given the opportunity to participate in settlement discussions. Although they were given only a short time in which to do so, it became apparent quickly that they would not agree to the debarment provisions of the agreement, and there is no indication that a longer period of discussion would have led to a change in those provisions. Accordingly, I find no due-process violation in the settlement proceedings.

4. Equitable Considerations

The objectors cite to two cases in which an administrative law judge permitted an employer continue sponsorship of H-1B petitions after committing violations of the INA: *Talukdar v. U.S. Dep't of Veteran's Affairs*, 2002-LCA-00025 and *Cambridge Resource Group*, 2008-LCA-00037. Those cases do not stand for the proposition that the parties to a settlement agreement cannot agree to a period of debarment. Further, the Administrative Review Board determined in *Talukdar* that the administrative law judge lacked the authority to waive debarment, *Talukdar v. U.S. Dep't of Veteran Affairs*, ARB No. 04-100, slip op. at 13 n. 12 (Jan. 31, 2007). In *Cambridge*, the agreement for partial debarment was withdrawn after the Department of Homeland Security objected to it based on the mandatory nature of the debarment sanction. Thus, neither *Talukdar* nor *Cambridge* requires or even permits that the settlement agreement be modified to allow existing H-1B workers to be sponsored by the Board for continued legal status.

The objectors also argue that debarment is manifestly inequitable because it will deprive the H-1B workers of their lawful status to stay and work in the United States and to obtain legal permanent resident status through employment with Prince George's County Public Schools. As discussed above, the H-1B workers have no enforceable right to continued H-1B status or to sponsorship for legal permanent resident status. Further, the Board's administrative policies with respect to such sponsorship vest sole discretion in the Board, and is conditioned on several factors including the Board's need for foreign workers. Before the Administrator's investigation into the instant matter was completed, the Board determined that it would not continue to sponsor H-1B workers unless qualified U.S. workers were not available, and the Board has determined that sufficient numbers of qualified U.S. workers are in fact available. Thus, the H-1B workers have no reasonable expectation, let alone an enforceable right, to continued sponsorship.

The objectors argue that approval of the settlement agreement would result in the immediate discharge of numerous workers, causing an immediate adverse impact on the Prince George's County school system. The evidence shows otherwise. The Board represents that it has been able to hire U.S. workers in place of almost all of the H-1B workers whose visas have expired since the Administrator's determination, and that it expects to be able to hire U.S. workers in place of workers whose H-1B visas will expire in the future.

Based on the foregoing, the objections based on equitable considerations are overruled.

5. Equitable Estoppel/Promissory Estoppel

The Pilipino Educators Network argues that the Board should be estopped from entering into the settlement agreement based on its promises to the H-1B workers that they would be sponsored for H-1B visa extensions and that the Board would assist them in obtaining legal permanent resident status. PEN cites Maryland law in support of its argument, and suggests that Maryland law should apply because the workers were hired to work in Maryland and a majority of the actions complained of occurred in Maryland.

The Maryland law of equitable estoppel is not applicable to this case. Although PEN suggests that Maryland substantive law should apply, it is the responsibility of the federal government to determine and enforce the laws respecting immigration to the United States. PEN has cited no authority, and there is none, to suggest that a state-law doctrine should be used to interfere with plenary federal authority. Furthermore, the cases cited by PEN are inapplicable here. The doctrine of equitable estoppel applies in Maryland to prevent a party from asserting rights as against another person who was misled by and relied on the party's conduct to his or her detriment. *Savonis v. Burke*, 241 Md.316, 216 A.2d 521 (1966). PEN has not shown that the Board's actions were misleading, or that the reliance on their promises was detrimental. Additionally, the proposed settlement agreement does not involve the assertion of rights by the Board against the H-1B workers. It involves an agreement between the Board and the Administrator that has adverse collateral consequences to the H-1B workers. The Maryland law of equitable estoppel simply does not apply to this matter. Likewise, the law of promissory estoppel or detrimental reliance is inapplicable. In Maryland, promissory estoppel requires the establishment of four elements: (1) a clear and definite promise; (2) where the promisor has a reasonable expectation that the offer will induce action or forbearance on the part of the promisee; (3) actual and reasonable action or forbearance by the promisee induced by the promise; and (4) detriment which can only be avoided by the enforcement of the promise. *Pavel Enterprises, Inc. v. A.S. Johnson Co., Inc.*, 342 Md. 143, 674 A.2d 521 (1996). In this case, it is clear that there was no clear and definite promise either that the H-1B workers would be sponsored for extensions or that they would be sponsored for legal permanent resident status. The so-called promises were subject to numerous conditions, not the least of which was the need for H-1B workers due to the unavailability of U.S. workers. Thus, even if Maryland law applied to this matter, which it does not, that law does not preclude approval of the settlement agreement.

Based on the foregoing, IT IS ORDERED that *In the Matter of Administrator, Wage and Hour Division v. Board of Education of Prince George's County*, Case No. 2011-LCA-00026 be, and the same is, SEVERED from Case Numbers 2011-LCA-00027 through -00032.

IT IS FURTHER ORDERED that Case Numbers 2011-LCA-00027 through -00032 will remain consolidated pending resolution of the motion to dismiss filed in those matters

IT IS FURTHER ORDERED:

- (1) The settlement agreement is APPROVED and its terms are adopted and incorporated herein by reference;

- (2) The parties shall comply with each and every term contained in the Agreement;
- (3) The Board will pay to the Administrator the sum of \$4,222,146.35 representing amounts to be paid to the H-1B workers identified in Appendix B to the agreement (hereafter "Appendix B"), by means of a certified check made payable to the "Wage and Hour Division – Labor" and referencing "Case Number 1475657 – Back Wages" at the following address:

U.S. Department of Labor
Wage and Hour Division
The Curtis Center, Suite 850 West
170 S. Independence Mall West
Philadelphia, PA 19106

- (4) Upon receipt of the payment referred to in paragraph 3 above, the Administrator will distribute the amounts to the persons named in Appendix B, or to their estates if necessary. Any amounts not paid to employees within a period of three years from the date of receipt of the payment referred to in paragraph 3 because of inability to locate the proper persons or because of their refusal to accept such amounts shall be deposited into the Treasury of the United States as miscellaneous receipts. The Administrator will make no withholding from the amounts on Appendix B that represent fees paid by employees, but will make appropriate legal deductions from the gross amounts owed to two employees that represent the failure to pay required wage (benching).
- (5) The Board will pay \$100,000 to the Administrator as a civil money penalty, in four payments of \$25,000 due on November 1, 2011, February 1, 2012, May 1, 2012 and August 1, 2012. Payments shall be made in the manner set forth in paragraph 3 above, except that the checks should reference "Case Number 1475657 – Civil Money Penalties" rather than "Back Wages." If at any time the Board should default on this payment schedule, the entire balance of \$100,000, less any payments previously made, shall be accelerated and shall become immediately payable upon demand. Such defaulted balance shall be subject to the assessment of interest and penalties at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996, P.L. 104-134.
- (6) The Board shall not file any employment-based petitions pursuant to sections 204 or 214(c) of the INA, 8 U.S.C. §§ 1154 and 1184(c), for a period beginning July 7, 2011 and ending two years after the Administrator notifies the Department of Homeland Security and the Employment and Training Administration that a final decision and order has been issued in accordance with 20 C.F.R. § 655.855(b). Should the Board file any employment-based petition pursuant to section 204 or section 214(c) of the INA during that period, the Board shall owe and will immediately pay the total civil money penalty of \$1,740,000.000 that was assessed by the Administrator in the Determination Letter, less any amount of civil money penalty previously paid.
- (7) Neither the Board nor any of its employees, agents, representatives, or anyone acting on its behalf shall intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee (which term includes a former employee or an applicant for employment) because the employee has – (1) disclosed

information to the Administrator or her representative, to the Board of Education, or to any other person, that the employee reasonably believes evidences a violation of sections 212(n) or (t) of the INA or any regulation relating to section 212(n) or (t), including subpart I and subpart H of 20 C.F.R. Part 655 and any pertinent regulations of the Department of Labor, DHS, or the Department of Justice; (2) cooperated or participated in, or sought to cooperate or participate in, an investigation or other proceeding concerning the Board of Education's compliance with the requirements of sections 212(n) or (t) of the INA or any regulation relating to sections 212(n) or (t), or (3) requested review of the Determination Letter or accepted any amount pursuant to the settlement agreement.

- (8) Respondent shall comply in all respects with the Act and applicable regulations in the future;
- (9) The entire record upon which this Order was issued consists of the Administrator's determination, Respondent's request for a hearing, Respondent's Motion to Dismiss and/or for Summary Judgment for Lack of Jurisdiction, and the Agreement;
- (10) The parties waive any further procedural steps before an administrative law judge and any right to challenge or contest the validity of the Agreement, this Order, and any other order issued in accordance with the Agreement.
- (11) This Order shall fully and finally resolve all outstanding issues between the parties that were raised or reasonably could have been raised in connection with the Administrator's determination letter of April 4, 2011;
- (12) The settlement agreement and this Order shall have the same force and effect as an order made after a full hearing;
- (13) Each party shall bear its own costs, attorney's fees and expenses;
- (14) The settlement agreement and this Order shall comprise my findings of fact and conclusions of law and shall constitute the full, final, and complete adjudication of this proceeding.

SO ORDERED.

A

PAUL C. JOHNSON, JR.

Associate Chief Administrative Law Judge