

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

ALJ Case No: 2011-LCA-00014

ADMINISTRATOR, WAGE & HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR
Prosecuting Party

v.

INFINITUM, INC.
Respondent

Before: Jonathan C. Calianos, Administrative Law Judge

Appearances:

Christine A. Collins, Esquire, (U.S. Department of Labor, Office of the Solicitor)
Boston, Massachusetts, for Prosecuting Party

Ronald L. Abramson, Esquire, (Abramson Immigration + Solutions)
Manchester, New Hampshire, for Respondent

DECISION AND ORDER APPROVING SETTLEMENT
AGREEMENT AND CONSENT FINDINGS

This case arises from a request for hearing filed by the Respondent in the above captioned matter, which involves the enforcement of an H-1B Labor Condition Application by the Administrator, Wage & Hour Division, United States Department of Labor (“Administrator” or “Prosecuting Party”) under section 212(n) of the Immigration and Nationality Act (“the Act”),

8 U.S.C. §1101(a)(15)(H)(I)(b) and § 1182(n), and the regulations promulgated there under at 20 C.F.R. Part 655, Subparts H and I, 20 C.F.R. §655.700 *et seq.* On January 20, 2011, the Administrator, issued a determination that the Respondent violated the Act by, *inter alia*, failing to pay wages as required by the Act, failing to make the required displacement inquiry, failing to maintain documentation, and failing to otherwise comply with the regulations.

The Administrator determined that the Respondent owed back wages totaling \$49,619.01 to five H-1B non-immigrant workers and additional back wages of \$1,218.00 for minimum wage violations under the Fair Labor Standards Act. The Administrator also assessed civil monetary penalties in the amount of \$4,650.00. On February 3, 2011, the Respondent, pursuant to 20 C.F.R. § 655.820, timely filed a request for review of the Administrator's determination. A formal hearing was originally scheduled for March 11, 2011, in Boston, Massachusetts and was subsequently continued over various dates. On May 10, 2011, the parties filed a Joint Notice Concerning Settlement, indicating that all disputed issues had been resolved and the Respondent would be paying agreed back wages by June 16, 2011. The parties anticipated filing an original settlement agreement memorializing all terms by June 17, 2011, after receipt of the required payments by the Respondent. Because payment was delayed under the parties' agreement, I reset the matter for hearing on July 20, 2011, and I indicated that the hearing would be vacated only if the attorney for the Administrator, Christine A. Collins, Esq., filed an affidavit indicating that the Respondent fully complied with the terms of the executed settlement agreement. On July 19, 2011, Attorney Collins filed a statement indicating there was full compliance, and on the same date the parties filed a document entitled: Settlement Agreement and Consent Findings (hereinafter "Agreement"). Upon review of the Agreement, I find that the terms are fair and reasonable and in substantial compliance with 29 C.F.R. § 18.9(b) and it is approved.

Pursuant to the Agreement the following order shall enter:

- (1) The 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) Respondent agrees that it is liable for a total payment of \$39,467.47 in back wages owed to the H-1B employees listed in Exhibit A to the Agreement and it has tendered certified bank checks to the Wage and Hour Division in the net amount due each employee listed in Exhibit A to the Agreement;
- (4) Respondent agrees that it is liable for an additional payment of \$1,218.00 in back wages owed to one employee listed in Exhibit A to the Agreement and it has tendered a certified bank check to that employee in care of the Wage and Hour Division;
- (5) Respondent agrees that it is responsible for withholding the legally required deductions on \$5,625.00 previously paid to Satyanarayana Vadlapatla and for paying these amounts and the employer's contributions to the appropriate entities. Respondent has provided proof to the Wage and Hour Division evidencing these deductions were paid;
- (6) Any sum not distributed to the employee or to his personal representative after three years because of inability to locate the employee or because of his refusal to accept such sum, shall be deposited with the Treasurer of the United States as miscellaneous receipts;
- (7) Respondent shall not, under any circumstances, accept and keep any amount returned to it by a person owed compensation under this Agreement. Any such amount shall be immediately paid to the Administrator as set forth above, and Respondent shall have no further obligations with respect to such returned monies;
- (8) Respondent agrees that it violated the Act by failing to maintain required documentation and by requiring or accepting payment of the additional petition fee from two H-1B employees. Respondent agrees to pay a civil monetary penalty of \$2,500 for these violations and said sum has been tendered to the Wage and Hour Division by certified bank check;
- (9) Respondent agrees to comply in all respects with the Act and applicable regulations in the future;
- (10) Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the terms of the Agreement is retained by the U.S. Department of Labor, Office of Administrative Law Judges ("OALJ");

- (11) Enforcement Proceedings for violation of the Agreement may be initiated any time by filing a motion requesting an order of enforcement and sanctions with the OALJ;
- (12) 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;
- (13) 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;
- (14) This Order and the parties' Agreement 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 January 20, 2011;
- (15) The Agreement and this Order shall have the same force and effect as an order made after a full hearing;
- (16) Each party shall bear its own costs, attorney's fees and 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;
- (17) Nothing in the Agreement or this Order is binding on any other governmental agency other than the United States Department of Labor; and
- (18) The 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.

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JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts