

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 August 2012

Case No.: 2011-LCA-00064

In the Matter of:

RAGHAV KHOKALE

Appellant/Complainant

and

**ADMINISTRATOR,
WAGE AND HOUR DIVISION**

Prosecuting Party

v.

CYBRID, INC.

Respondent

**FINAL ORDER APPROVING PARTIES’
CONSENT FINDINGS**

On August 21, 2012, counsel for the Administrator submitted the parties’ executed *Consent Findings*. The parties’ filing contains the following stipulations:

1. This action arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182 (“TNA” or “the Act”), and the regulations promulgated thereunder at 20 C.F.R. Part 655, Subparts H and I. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by § 212(n)(2) of the Act, 8 U.S.C. § 1182(n)(2), and the applicable regulations, 20 C.F.R. § 655.1 et. seq.

2. The issues resolved by these Consent Findings were identified initially during investigations conducted by the Wage and Hour Division of the U.S. Department of Labor (“Wage and Hour”) in 2010 and 2011 regarding Respondent’s compliance with the H-1B provisions of the INA, 8 U.S.C. § 1101(a)(15)(H)(i)(b), and the applicable regulations.

3. On August 24, 2011, the Administrator issued to Respondent a Determination Letter detailing its findings. A Summary of Violations and Remedies (“Summary”) was attached to the Determination Letter. The Summary stated that the investigation by Wage and Hour had determined that violations of the H-1B provisions of the JNA had occurred as a result of Respondent’s failure to pay wages as required by 20 C.F.R. § 655.731. On February 29, 2012, the Administrator moved to amend its Determination Letter, asserting that, through discovery,

the Administrator had discovered another violation of the H-1B provisions of the INA, the misrepresentation of a material fact on a Labor Condition Application (“LCA”) in violation of 20 C.F.R. § 655.730.

3. The Administrator determined that a total of \$93,790.89 in back wages was owed to two H-1B nonimmigrant workers. These wages were later modified to a total of \$54, 971.63 of back wages. The Administrator also assessed a \$1,000 civil money penalty for the violation of 20 C.F.R. § 655.730.

4. When modifying the Determination Letter in 2012, the Administrator stated that the Department of Labor’s Employment and Training Administration (“ETA”) and the Department of Homeland Security (“DHS”) would be notified when the determination for the violation of 20 C.F.R. § 655.730 (relating to a material misrepresentation on the LCA) became final. In the amendment, the Administrator further stated that upon notification, DHS is required to deny any petitions filed by Respondent under 8 U.S.C. § 1154 and § 1184(c) for a period of at least one year beginning on the date of the receipt of the notification and that ETA is required to invalidate any current LCA with respect to future hires and not accept for filing any new LCA(s) for the same one-year period.

5. On September 9, 2011, within the time period provided by 20 C.F.R. § 655.820, Respondent filed a Request for Hearing. In its Request for Hearing, Respondent contested the determinations arguing the Administrator’s wage calculations were erroneous. On March 16, 2012, Respondent filed its Opposition to Administrator’s Motion to Amend the Determination Letter, in which Respondent argued that it did not misrepresent a material fact.

6. Counsel for the Administrator and counsel for Respondent have conducted discussions regarding resolution of this matter. The parties have now agreed to resolve this matter so as to avoid the burden, expense, and delay of further litigation.

7. Respondent as a good faith resolution of its dispute with the Administrator concerning the failure to pay required wages and fees, has agreed to pay back wages in the total amount of \$28,500 to the employees listed on the attached Schedule A, within thirty days of the date that the Administrative Law Judge approves these Consent Findings by signing the Order in this case. This payment constitutes full satisfaction of all back wage claims arising against Respondent as a result of its failure to compensate the H-1B workers in accordance with 8 U.S.C. § 1182(n)(2)(C)(vii) and 20 C.F.R. § 655.731. This settlement does not include the taxes and contributions Cybrid is required to make under Federal or State law, as an “employer’s share,” such as Social Security or State or Federal unemployment compensation payments.

8. The parties agree that these Consent Findings do not affect the rights of the Respondent or the two H-1B workers receiving payment of back wages outside the scope of the INA and the regulations promulgated under the INA at 20 C.F.R. Part 655.

9. Appellant and Respondent agree to waive all legal claims and potential legal claims that exist or could arise based on any event(s) prior to undersigned date. This waiver

includes but is not limited to Cybrid's withdrawal of its Federal Court complaint and case (Civil Action No. 1:1 2-CV-033) as referenced in Section 16 herein.

10. Respondent agrees to pay a total of \$1,000.00 in civil money penalties, to be paid in one (1) lump sum, within thirty (30) days of the date that the Administrative Law Judge approves these Consent Findings by signing the Order in this case.

11. Respondent agrees to make payment in the form of a cashier's check or certified check made payable to "Wage and Hour Division, U.S. Department of Labor" (noting on the memo line "Case ID. No. 2011 -LCA-00064"), and to deliver payment to the United States Department of Labor, Wage and Hour Division, Ann: Mary Doughty, Suite 850W, 170 S. Independence Mall West, Philadelphia, 19106-3317, on or before the due date. Should Respondent fail to make the agreed payment within ten (10) days of the date scheduled, the entire amount will immediately become due and payable, together with such additional collection and court costs as may be incurred by the Administrator in pursuing collection.

12. In the event of default, the Administrator may pursue collection actions including, but not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.

13. Pursuant to 20 C.F.R. § 655.855., the parties agree that ETA and DHS shall be notified that the Respondent is to be disqualified from approval of any petitions filed by, or on behalf of, the Respondent pursuant to section 204 or 214(c) of the Act (8 U.S.C. § 1182(n)).

14. Respondent agrees to voluntarily dismiss with prejudice, or stipulate to a dismissal with prejudice, its complaint and civil action in the United States District Court for the Middle District of Pennsylvania (Civil Action No. 1:1 2-CV-033) regarding the immigration status of the Appellant and any and all other claims or causes of action relating to the Federal Defendants in said civil action within seven days of this Court's order approving the consent findings.

15. The Administrator, Appellant, and Respondent hereby consent that the above Consent Findings and the Order disposing of this proceeding shall have the following effect:

- a. That the Consent Findings and Order entered into in accordance with this agreement shall have the same force and effect as an Order made after full hearing;
- b. That the entire record on which any Order may be based shall consist solely of the Determination Letter and the Consent Findings;
- c. That the Administrator, Appellant, and Respondent waive any right to challenge or contest the validity of the Consent Findings and Order entered into in accordance with this agreement;

d. All violations set forth in the Determination Letter shall be deemed fully resolved by these Consent Findings;

e. This Decree shall become final immediately upon approval of the Administrative Law Judge; and

f. Respondent shall not solicit or accept from any employee any back wages paid pursuant to these Consent Findings.

16. NOW, therefore, agreement having been reached by the Administrator, the Appellant, and Respondent as to all contested charges set forth in the Determination Letter, the parties further stipulate and agree that each party shall bear its own costs as to this proceeding. Specifically, each party agrees to bear its/his own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorneys' fees and costs which may be available under the Equal Access to Justice Act, as amended.

I adopt the parties' stipulations as set forth above as my findings of fact.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey

SCHEDULE A

Name of H1-B Employee	Amount Due
Raghav Khokale	\$16,000.00
George Omondi	\$12,500.00