

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 April 2014

Case No.: 2011-LCA-00036

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR,

Complainant/Prosecuting Party,

v.

GAINESVILLE HEART AND VASCULAR GROUP, PC;
DAVID P. JOHNSON, MD & CEO;
MARTIN R SIEGFRIED, MD & CFO;
BERNADINE M. KING, MD & SECRETARY; and
SYED N.H. SHAMSI, MD,

Respondents.

DECISION AND ORDER APPROVING CONSENT FINDINGS

This matter arises under the Immigration and Nationality Act H-1B visa program, 8 U.S.C. § 1101 (a)(15)(H)(i)(b) ("Act") and the implementing regulations at 20 C.F.R. Part 655, Subparts H and I. Gainesville Heart and Vascular Group, et al. challenged the Determination Letter issued by the Administrator, Wage and Hour Division (Administrator) on April 5, 2011

By the Administrator's Determination of April 5, 2011, the Administrator found that the Respondents had committed two violations of the H-1B provisions of the INA. The violations were: (1) the Respondents failed to pay required wages to one non-immigrant worker in the total amount of \$69,887.35 pursuant to 20 CFR §655.731; and (2) the Respondents failed to provide notice of the Labor Certification Application as required pursuant to 20 CFR §655.734. The Administrator imposed no civil money penalties and ordered the Defendant to pay back wages in the amount of \$69,887.35 and to comply with the provisions of 20 CFR §655.731 and 20 CFR §655.734 in the future. On April 28, 2011, the Respondents filed an answer and request for formal hearing. In the filing, the Respondents disputed the back wage payments to the identified H-1B nonimmigrant worker. On March 24, 2014, the Parties jointly filed Consent Findings and thereby stipulate, agree and consent, pursuant to 29 CFR § 18.9, to entry of findings as follows:

1. This action arises under the Immigration and Naturalization Act of 1952, P.L. 82-414, 66 Stat.163, codified as amended at 8 U.S.C. §1101 *et seq.* (“INA”), as amended by the Immigration Act of 1990, P.L. 101-649, 104 Stat.4978, the Miscellaneous Technical Immigration and Naturalization Amendments of 1991, P.L. 102-232, 105 Stat. 19733, and the American Competitiveness and Workforce Improvement Act of 1998 (“ACWIA”), P.L. 105-277, 112 Stat. 2861-641. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by INA Section 212(n)(2), 20 C.F.R. §§ 655.820-840.
2. The issues resolved by these Consent Findings and Order were identified initially during an investigation conducted by the Wage and Hour Division.
3. On April 5, 2011, the Administrator issued to Respondents a Determination Letter identifying alleged violations of the H-1B provisions of the INA. Respondents were determined to owe back wages of \$69,887.35 to one H-1B nonimmigrant employee due to violations of 20 C.F.R. §655.731 and 20 C.F.R. §655.734.
4. Within the time period provided by 20 C.F.R. §655.820, Respondents filed a Request for Hearing with respect to the allegations of violations set forth in the Determination Letter.
5. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.
6. The entire record forming the basis on which this Order is entered shall consist of the April 5, 2011, Determination Letter, any attachments thereto, and these agreements and consents.
7. The Parties to these Consent Findings and Order hereby waive all further procedural steps between themselves before the Administrative Law Judge.
8. The Parties waive any right to challenge or contest the validity of these Consent Findings and Order.
9. All violations alleged in the Determination Letter issued by the Administrator are and shall be deemed fully resolved by these Consent Findings and Order with regard to both Complainant and Respondents.
10. These Consent Findings and Order shall become final immediately upon Approval of the Administrative Law Judge. The effective date of these Consent Findings and Order shall be the date of Approval by the Administrative Law Judge.
11. Respondents do not admit the allegations raised in the Administrator’s Determination Letter issued to Respondents on April 5, 2011.

12. The Administrator hereby amends the Determination Letter issued to Respondents dated April 5, 2011, to state that gross back wages in the total amount of \$48,817.39 are owed to Fathi Idris Ali Amghaiad, M.D. (hereinafter Dr. Ali).
13. Respondents withdraw the aforesaid exception to administrative determination and agree to pay \$48,817.39 in back wages in 12 monthly installments of \$4,068.12, due on the first of the month, until the full amount of back wages be paid, by cashier's or certified check or money order in said amount payable to "Wage and Hour Division – Labor." Should Respondents fail to make any such payments, as scheduled, the entire unpaid balance shall become due and payable, together with such court costs as may be incurred by the U.S. Department of Labor to collect such amounts. The payment shall be sent to the following address:

U.S. Department of Labor
Wage and Hour Division
Room 7M40
61 Forsyth Street, SW
Atlanta, GA 30303
14. The Administrator, thereupon, shall distribute the proceeds of such checks or money orders, less deductions for federal income taxes and employee contributions to F.I.C.A., as required by law, to Dr. Ali, or to his personal representatives, and any amounts not so distributed by the Administrator within the period of three years after date of these Findings, because of inability to locate the proper persons or because of such persons' refusal to accept such sums, shall be deposited into the Treasury of the United States as miscellaneous receipts. Respondents shall remain responsible for the employer's share of the F.I.C.A. arising from or under back wages paid hereunder.
15. Respondents withdraw their Request for Hearing filed in this matter.
16. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implantation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.
17. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon filing with the Administrative Law Judge a motion for an Order of enforcement and sanctions.
18. Each Party will bear its own fees and other 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.
19. These Consent Findings and Order shall constitute the final Administrative Order in this case.

After review of the filed Consent Findings, this Administrative Law Judge finds that they are in compliance with 29 CFR § 18.9, are in the best interests of all the Parties, and adequately resolve all pending issues for this matter. Accordingly, **IT IS ORDERED** that the Consent Findings are **ADOPTED AND APPROVED** pursuant to the provisions of 29 CFR § 18.9(e)(11).

DANA ROSEN
Administrative Law Judge

DR/JRS/jcb
Newport News, Virginia