

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

Issue Date: 02 November 2012

CASE NO.: 2012-LCA-00060

In the Matter of:

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

v.

ABACUS SOFTWARE DIVISION, 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

Abacus Software Division appearing *pro se*, by its President, Saluni Fadia

**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 August 30, 2012, the Administrator, issued a determination that the Respondent violated the Act by, *inter alia*, failing

to pay wages as required by the Act, misrepresenting a material fact on the Labor Condition Application, requiring or attempting to require an H-1B non-immigrant employee to pay a penalty for ceasing employment prior to an agreed upon date, and failing to otherwise comply with the regulations.

The Administrator determined that the Respondent owed back wages totaling \$62,313.08 to thirteen H-1B non-immigrant workers. The Administrator also assessed civil monetary penalties in the amount of \$40,950.00 and debarred the Respondent for two years from participating in the program. On September 13, 2012, 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 October 26, 2012, in Boston, Massachusetts and was subsequently cancelled when the parties filed a Joint Notice Concerning Settlement, indicating that all disputed issues had been resolved. On October 26, 2012, the parties filed a document entitled: "Amended Settlement Agreement and Consent Findings" (hereinafter "Agreement")¹. 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, including the Back Wage Compliance and Payment Agreement which is a part of, and appended as Exhibit A to the Agreement (hereinafter the "Back Wage 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 \$62,313.08 in back wages owed to thirteen H-1B employees and said wages will be paid

¹ The original version of the Agreement was filed on October 24, 2012, but had to be amended on account of a typographical error concerning the date when Respondent had to satisfy its obligation to pay the back wages due under the Agreement.

by Respondent in accordance with the Back Wage Agreement on or before January 31, 2013;

- (4) Any sum not distributed to an employee or to his/her personal representative after three years because of inability to locate the employee or because of his/her refusal to accept such sum, shall be deposited with the Treasurer of the United States as miscellaneous receipts;
- (5) Respondent shall not, under any circumstances, accept and keep any amount returned to it by a person owed compensation under the Agreement. Any such amount shall be immediately paid to the Administrator as set forth in the Agreement, and Respondent shall have no further obligations with respect to such returned monies;
- (6) Respondent agrees that it violated the Act by misrepresenting a material fact on ten Labor Condition Applications, by willfully failing to pay wages as required to thirteen H-1B employees, and by requiring or attempting to require three H-1B employees to pay a penalty for ceasing employment prior to an agreed upon date. Respondent agrees to pay a civil monetary penalty of \$30,000.00 for these violations, and as of the date of the Agreement it has tendered partial payment of \$20,000.00 to the Wage and Hour Division by certified bank check. The remaining \$10,000.00 will be paid in two installments to the Wage and Hour Division by certified bank check in the amount of \$5,000.00 each, with one payment being postmarked before February 28, 2013, and the second payment being postmarked before March 31, 2013;
- (7) Provided that the Respondent has not defaulted under the Agreement and as described in Paragraphs 4(g) and 4(h) of the Agreement, the Administrator will not enforce the debarment penalty set forth in the Administrator's Determination Letter;
- (8) Respondent agrees to comply in all respects with the Act and applicable regulations in the future;
- (9) 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");
- (10) 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;

- (11) The entire record upon which this Order was issued consists of the Administrator's determination, Respondent's request for a hearing, and the Agreement;
- (12) 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;
- (13) 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 August 30, 2012;
- (14) The Agreement and this Order shall have the same force and effect as an order made after a full hearing;
- (15) 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;
- (16) Nothing in the Agreement or this Order is binding on any other governmental agency other than the United States Department of Labor; and
- (17) 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.

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts