



Issue Date: 09 January 2014

Case No.: 2013-LCA-00012

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,

Complainant,

v.

SOFTPATH SYSTEM, LLC,

Respondent.

DECISION AND ORDER
APPROVING CONSENT FINDINGS

This case was brought under the Immigration and Naturalization Act of 1952, P.L. 82-414, 66 Stat. 163, codified and amended as 8 USC § 1101 *et seq.* (“the 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. 1733, and the American Competitiveness and Workforce Improvement Act of 1998 (“ACWIA”), P.L. 105-277 Stat. 2861-641. The case was set for hearing on October 29, 2013. After Respondent filed a Motion for a Continuance, the case was rescheduled to January 23, 2014. On December 18, 2013, the parties informed this office that they no longer required a hearing to resolve the issues.

Pursuant to 29 CFR § 18.9 (1992), the parties to this action, Complainant, Administrator, Wage and Hour Division (“Administrator”), the Respondent Softpath System, LLC (“Respondent”), have negotiated and executed these Consent Findings and Order. These Consent Findings and Order constitute a full and final resolution of this action and of all issues raised by the Administrator’s Determination Letter issued to Respondent on February 27, 2013.

JURISDICTION
AND
PROCEDURAL HISTORY

1. This action arises under the Immigration and Naturalization Act of 1952, P.L. 82-414, Stat. 163, codified as amended at 8 USC § 1101 *et seq.* (“the 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. 1733, 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 CFR §§ 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 February 27, 2013, the Administrator issued to Respondent a Determination Letter identifying alleged violations of the H1-B provisions of the INA including failure to pay wages as required by 20 CFR § 655.731 and failure to maintain documentation as required by 20 CFR § 655.731(b).
4. Within the time period provided by 20 CFR § 655.820, Respondent filed a Request for a Hearing with respect to allegations of violations set forth in the Determination Letter.

GENERAL PROVISIONS

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 the Order is entered shall consist of the February 27, 2013 Determination Letter and 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 the Complainant and Respondent.
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.

SPECIFIC PROVISIONS

11. The Administrator hereby amends the aforesaid Determination Letter to allege that Respondent owes gross back wages in the total amount of \$126,357.51- owing \$32,871.78 to Sushant Mantri, \$52,917.08 to Mayank Naik, and \$40,618.65 to Reetu Tuladhar.
12. Without admitting the violations alleged, Respondent withdraws the aforesaid exception to administrative determination and agrees to pay \$126,357.51, by \$29,389.40 due by March 1, 2014 and by 12 monthly installments of \$7,347.35 thereafter, due on the twenty-seventh (27th) day of the month, until the full amount of back wages by paid, by cashier's check or certified check or money order in said amount payable to "Wage and Hour Division—Labor." Should Respondent fail to make any of 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, Georgia 30303

13. The Administrator, thereupon, shall distribute the proceeds of such check or money order, less deductions for federal income taxes and employee contributions to F.I.C.A., as required by law, to Sushant Mantri, Mayank Naik, and Reetu Tuladhar, or to their 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' refusals to accept such sums, shall be deposited in the Treasury of the United States as miscellaneous receipts. Respondent shall remain responsible for employer's share of the F.I.C.A. arising from or under back wages paid hereunder.
14. Respondent withdraws its Request for Hearing filed in this matter.

Reporting and Enforcement

15. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate implementation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.
16. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon the filing with the Administrative Law Judge a motion for an Order of enforcement and sanctions.
17. 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.
18. These Consent Findings and Order shall constitute the final Administrative Order in this case.

ORDER

It is **ORDERED** that the settlement be, and hereby is, **APPROVED**.

KENNETH A. KRANTZ
Administrative Law Judge

KAK/mrc
Newport News, Virginia