



Issue Date: 15 August 2013

Case No.: 2013-LCA-00018

In the Matter of:

ADMINISTRATOR,
WAGE AND HOUR DIVISION ,

Prosecuting Party,

v.

SPYREL, INC., *pro se*,

Respondent.

**ORDER ON CONSENT FINDINGS
AND
ORDER CANCELLING SCHEDULED HEARING**

This case arises under the H-1B visa program of the Immigration and Nationality Act of 1952 (INA), 8 U.S.C.A. § 1101, et seq, as amended, and its implementing regulations found at 20 CFR Part 655, Subparts H and I. The Respondents filed a timely request for formal hearing of the Administrator's March 26, 2013 determination that the Respondents had committed three violations of the INA by (1) failing to pay wages as required by 20 CFR § 655.731; (2) failing to provide notice of the filing of the Labor Condition Applications (LCA) in violation of 20 CFR § 655.734; and (3) failing to maintain copies of records in violation of 20 CFR §655.715, see §655.805(a)(16). The Respondent was directed to pay \$15,573.59 in back wages to two¹ non-immigrant H-1B workers and was directed to comply with the provisions of 20 CFR §§ 655.731, 655.734, and 655.715 in the future ("Determination Letter"). No civil penalties were levied against the Respondent.

By Order of June 17, 2013 a formal hearing was scheduled to commence at 9:00 AM, Tuesday, September 10, 2013 in Newport News, Virginia. The Order also directed the Plaintiff to file a Bill of Particulars setting forth the specific nature of the alleged violations by June 27, 2013. On

¹ The Administrator originally identified three relevant LCAs in this action: I-09083-4822471; I-08277-4514235; and I-09083-4823335 and attached an initial complaint by a non-immigrant, not identified by LCA number.

June 27, 2013, the Plaintiff filed a Bill of Particulars setting forth the name and LCA number (I-09083-4823335) of the one non-immigrant H-1B worker allegedly owed \$11,049.76 for back wages from October 4, 2009 to January 16, 2010 (\$9,574.76) and illegal deduction (\$1,475.00) as well as requiring payment of filing fees in violation of 20 CFR §655.731(c)(10)(ii) and also identifying another non-immigrant H-1B worker by name and LCA number (I-08277-4514235) related to failing to provide notice of filing the LCA in violation of 20 CFR §655.734 and for placing the individual outside the place of employment listed on the LCA without obtaining a new LCA for that worksite in violation of 20 CFR §655.715.

On June 25, 2013, Plaintiff filed a “Motion to Amend the Administrator’s Determination Letter” by adding a fourth violation for Respondent requiring or accepting “from the H-1B worker named in this matter, payment or remittance of the filing fee required in filing an H-1B petition, in violation of 20 CFR §655.731(c)(10)(ii).” Plaintiff avers that “there is no civil money penalty assessed. The remedy sought is for the Respondent to return the filing fee to the employee.”

On August 9, 2013, the Parties filed an agreed “Consent Findings and Order” with this presiding Judge, which they averred “constitute a full and final resolution of all issues raised by the Administrator’s Determination Letter issued to Respondent on March 26, 2013.” The Parties thereby stipulated, agreed and consented, pursuant to 29 CFR § 18.9, to entry of findings as follows:

1. This matter arises under the INA, as amended, and the Regulations found at 29 CFR Part 655, Subparts H and I.
2. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by §212(n)(2) of the INA and the applicable regulations, 20 CFR §655.820-840.
3. The issues resolved by the Consent Findings were identified initially during an investigation conducted by the Wage and Hour Division of the U.S. Department of Labor.
4. On March 26, 2013, the Administrator issued to Respondent a Determination Letter identifying the alleged violations of the H-1B provisions of the INA.
5. Within the time period provided by 20 CFR §655.820, Respondent filed a Request for Hearing with respect to the allegations of violations set forth in the Determination Letter.
6. On July 16, 2013, the Administrator requested to amend the Determination Letter to include a violation of 20 CFR §655.731(c)(10)(ii).
7. The Administrator hereby amends the Determination Letter to allege that Respondent owes back wages in the total amount of \$11,049.76 to Saurabh Jain and further amends the Determination Letter to remove any allegation of back wages owed to Rohit Kulkarni.
8. Without admitting the violations alleged, Respondent withdraws the objection to the amended administrative determination and agrees to pay \$11,049.76 by cashier’s or

certified check or money order in said amount, payable to “Wage and Hour Division – Labor”, no later than 30 days following the entry of these Consent Findings. The payment shall be sent to the U.S. Department of Labor, Wage and Hour Division, Room 7M40, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

9. The Administrator shall distribute the proceeds of payment made pursuant to paragraph 8, to Saurabh Jain, or to his personal representatives, less deductions for federal income taxes and employee contributions to F.I.C.A., as required by law, and any amounts not so distributed by the Administrator within the period of three years after the date of these Consent Findings and Order, because of inability to locate the proper persons or because of such person’s refusals to accept such funds, shall be deposited into the Treasury of the United States as miscellaneous receipts. Respondent shall remain responsible for the employer’s share of the F.I.C.A. arising from or under the back wages paid hereunder.
10. The Parties 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 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 such final Order shall be based shall consist solely of the March 26, 2013 Determination Letter, and attachments thereto, and these agreements and consents;
 - c. That the Parties waive any right to challenge or contest the validity of the Consent Findings and Order entered into in accordance with this agreement;
 - d. That all violations set forth in the Determination Letter shall be deemed fully resolved by these Consent Findings and Order with regard to both the Complainant and Respondent; and,
 - e. That this Consent Order shall become final immediately upon approval by 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. The Parties stipulate and agree that each Party shall bear its own costs, fees and expenses as were incurred by it in connection with any stage of these proceedings. Specifically, each Party agrees to bear its/his own attorney’s fees, costs and other expenses incurred by such party in connection with any stage of the above-reference proceeding including, but not limited to. Attorney’s fees and cost which may be available under the Equal Access to Justice Act as amended.
12. The Parties further stipulate and agree that jurisdiction to effectuate the implementation of the provisions of these Consent Findings and Order is retained by the Office of Administrative Law Judges and that enforcement proceedings for violation of these

Consent Findings and Order may be initiated at any time upon filing of a Motion for an Order of Enforcement or Sanctions with the Office of Administrative Law Judges.

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); and **the formal hearing** scheduled to commence on September 10, 2013 is **CANCELLED**.

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia