

**U.S. Department of Labor**

Office of Administrative Law Judges  
11870 Merchants Walk - Suite 204  
Newport News, VA 23606

(757) 591-5140  
(757) 591-5150 (FAX)



**Issue Date: 09 May 2013**

Case No: 2013-LCA-00002

In the Matter of:

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

v.

WILLIAMS FORESTRY & ASSOCIATES,  
Respondent.

**ORDER ON CONSENT FINDINGS**

This case involves the labor certification for temporary employment of nonimmigrant foreign workers in occupations other than agricultural and registered nursing (H-2B) under the Immigration and Nationality Act (INA), as amended, 8 USC 1101, et seq., and its implementing regulations at 20 CFR Part 655, Subpart A. The Employer filed a timely request for a formal hearing of the Administrator's determination issued pursuant to 20 CFR §655.70 as related to the Employers' temporary employment certification #C-11347-56230 filed under the H-2B program.

On May 6, 2013 the Parties filed "Consent Findings" in the above captioned matter which they averred "constitute a full and final resolution of all issues raised by the Administrator's Determination Letter issued to Respondent on October 9, 2012 ("Determination Letter"). The Parties thereby stipulate, agree and consent, pursuant to 29 CFR § 18.9, to entry of findings as follows:

1. This matter arises under the INA 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 §655.1 et. seq.
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 covering the period December 16, 2011 through April 11, 2012 ("relevant time period"), regarding Respondent's compliance with the H-2B provisions of §1101(a)(15)(H)(ii)(b) of the INA and applicable regulations.

4. On October 9, 2012, 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 an investigation by Wage and Hour had determined that Respondent willfully misrepresented a material fact on the H-2B Application in violation of 20 CFR §655.60(a) and the H-2B provisions of the INA.
5. The Administrator assessed a total of \$2,500.00 in civil money penalties.
6. On October 22, 2013, and within the time period provided by 20 CFR §655.71, Respondent filed a Request for Hearing. In its Request for Hearing, Respondent contested the Administrator’s determination.
7. 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.
8. Respondent, as a good faith resolution of its dispute with the Administrator concerning the failure to pay required wages and fees, agrees to pay civil money penalty of \$2,500.00 within thirty (30) days of the date the Administrative Law Judge approves these Consent Findings by signing the Order in this case (“Due Date”). This payment constitutes full satisfaction of all civil money penalties assessed in this matter and the Administrator shall not recommend that the Employment and Training Division (“ETA”) debar Respondent.
9. The Administrator agrees to modify the October 9, 2012 Determination by changing the alleged violation of a willful misrepresentation of a material fact in violation of 20 CFR §655.60(a) to a substantial failure to meet a condition of labor certification in violation of 20 CFR §655.60(b) and §655.22(m).
10. Respondent agrees to comply with applicable law regarding the H-2B program in the future, including but not limited to the requirements of 20 CFR §655.60.
11. Except for proceeding under the INA, nothing contained in the Consent Findings shall be deemed to constitute an admission of a violation of the INA or implementing regulations and nothing contained in the Consent Findings is intended to constitute an admission of civil liability under any local, state or federal statute or any principle of common law.
12. Respondent agrees to make payment in the form of a cashier’s checks or certified check made payable to “Wage and Hour Division, U.S. Department of Labor” (noting on the memo line “Case No. 2013-LCA-00002”) and to deliver said payment to the United States Department of Labor, Office of the Solicitor, Attn: S.B. Kramer, 881 Federal Office Building, 1240 East 9<sup>th</sup> Street, Cleveland, Ohio 44199, on or before the Due Date. Should the Respondent fail to make the agreed payment within ten (10) days of the Due Date, 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.

13. In the event of default by Respondent, 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.
14. 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 Determination Letter and the Consent Findings;
  - 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,
  - e. That this Consent Order shall become final immediately upon approval by the Administrative Law Judge.
15. The Parties further 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.

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).

ALAN L. BERGSTROM  
Administrative Law Judge

ALB/jcb  
Newport News, VA