

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 09 May 2014

In the Matter of:

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

v.

2014 PED 00003

**BUTTERMILK LLC D/B/A BAR N RANCH.
Respondents**

ORDER OF DISMISSAL

This case was assigned to me for hearing pursuant to 20 C.F.R. § 655.820 et seq., as amended by the interim final regulations published by the Department of Labor on December 20, 2000, 65 Fed. Reg. 80110 et seq. (2000) to implement the H-2B provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101(a)(15)(H)(ii)(B) and 1182(n), and in accordance with 29 C.F.R. Part 18 of the Rules of Practice and Procedure of the Office of Administrative Law Judges. I proposed to set this case for May 27, 2014 in Helena, Montana.

On September 18, 2013, the Administrator of the Office of Foreign Labor Certification (OFLC) Issued a Notice of Intent to Debar (NOID) letter to the employer based on significant failure to comply with the audit process pursuant to 20 CFR § 655.24. In a letter dated October 1, 2013, the employer responded to the NOID and provided rebuttal evidence to contest the Administrator's findings. The Department has reviewed the documentation provided and determined that the employers rebuttal evidence did not adequately respond to the underlying audit request.

Specifically, the Notice of Audit Examination (NOAE) requested earnings records for three (3) distinct 30 day periods corresponding to the first and last month of employment and the month of July 2011. The report submitted by the employer summarized the April 2011 to October 31, 2011 payroll period, but failed to explicitly indicate the first and last 30-day periods of employment. This hindered OFLC's ability to ascertain whether H-2B workers started and ended work in accordance with the attested period of need and whether H-2B workers consistently worked full-time hours. Further, a column on the payroll report labeled "bonus" was given no explanation; as such OFLC was unable to ascertain how the bonus was assigned or whether U.S. workers or applicants were made aware of the possibility of earning a bonus. Moreover, the employer failed to provide copies of its job order, newspaper advertisements, documentation pertaining to U.S. applicants and agreements substantiating that it had contractually forbid foreign recruiters from accepting or charging fees to H-2B workers, as instructed in the NOAE.

On December 5, 2013, the administrator of the Office of Foreign Labor Certification entered a Notice of Debarment.

Although a response was filed and a hearing was requested, on May 8, John Clark, for Respondents, advised me that they will accept debarment.

After having been fully advised in these premises, IT IS ORDERED that these matters be **DISMISSED** with prejudice.

DANIEL F. SOLOMON
ADMINISTRATIVE LAW JUDGE

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") within 30 calendar days of this decision with the Administrative Review Board ("ARB"). The Board's address is:

Administrative Review Board
U.S. Department of Labor
Room S-5220
200 Constitution Ave, NW
Washington, D.C. 20210

Copies of the petition must be served on all parties and on the ALJ. If the ARB declines to accept the petition or if the ARB does not issue a notice accepting a petition within 30 days after the receipt of a timely filing of the petition, the decision of the ALJ shall be deemed the final agency action. If a petition for review is accepted, the decision of the ALJ shall be stayed unless and until the ARB issues an order affirming the decision. Where the ARB has determined to review this decision and order, the ARB will notify each party of the issue(s) raised, the form in which submissions must be made (e.g., briefs or oral argument), and the time within which such presentation must be submitted.