

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 22 December 2014**

**OALJ Case No.: 2014-PED-2**

**ETA No.: H-300-13227-655297**

**In the Matter of:**

**ADMINISTRATOR, OFFICE OF FOREIGN LABOR CERTIFICATION,  
EMPLOYMENT AND TRAINING ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Prosecuting Party**

**v.**

**CAJUN VISA COMPANY, INC.,  
Respondent**

**APPEARANCES:**

**JONATHAN HAMMER, ESQ.**  
On Behalf of the Administrator

**JOHN HYKEL, ESQ.**  
**RENEE HYKEL, ESQ.**  
On Behalf of the Respondent

**BEFORE: PATRICK M. ROSENOW**  
Administrative Law Judge

**DECISION AND ORDER**

**PROCEDURAL STATUS**

This proceeding arises under the H-2A temporary foreign agricultural guest worker provisions of the Immigration and Nationality Act, as amended<sup>1</sup> and the implementing

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<sup>1</sup> 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184.

regulations thereto<sup>2</sup> (collectively the H-2A program).<sup>3</sup> It relates to Respondent's request for a hearing on the Administrator's determination to debar it from the H-2A program.

In June 2013, the Certifying Officer (CO) of the Office of Foreign Labor Certification issued a number of Notices of Deficiency to Respondent's clients, pursuant to 20 C.F.R. § 655.141, suggesting that Respondent was an alter ego of LWA, a previously debarred entity. On 29 Aug 13, the CO issued a Final Determination against the clients, finding that Respondent was an alter ego of LWA. On 10 Sep 13, the CO received an Order to Show Cause in those cases requesting a briefing of whether the cases should be remanded to the CO to issue a specific Notice of Debarment to Respondent Vista, pursuant to 20 C.F.R. § 655.182. Once briefed, the Board of Alien Certification Appeals (BALCA) determined they should be remanded to the CO to issue a Notice of Debarment. On 4 Dec 13, a Notice of Debarment was issued to Respondent as an alter ego of LWA. On 17 Dec 13, Respondent requested a hearing, which was held in Covington, Louisiana on 8 May 14.

At the hearing, the parties were afforded a full opportunity to call and cross-examine witnesses, offer exhibits, make arguments, and submit post-hearing briefs.

My decision is based upon the entire record, which consists of the following:<sup>4</sup>

Witness Testimony of

John Rotterman<sup>5</sup>

Christy Cartaginese<sup>6</sup>

William Fletcher<sup>7</sup>

Keith Carpenter<sup>8</sup>

Terri White<sup>9</sup>

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<sup>2</sup> 8 C.F.R. § 214.2(h)(6) and 20 C.F.R. Part 655, Subpart B.

<sup>3</sup> All citations to 20 C.F.R. Part 655, Subpart B refer to the Final Rule promulgated in 2008 ("2008 Rule"), 73 Fed. Reg. 78020 (Dec. 19, 2008), as amended by the Interim Final Rule ("2013 IFR") promulgated in 2013, 78 Fed. Reg. 24047 (Apr. 24, 2013), since the Department has postponed its implementation of the Final Rules promulgated in January 2011, 76 Fed. Reg. 3452 (Jan. 19, 2011) ("2011 Wage Rule") and February 2012, 77 Fed. Reg. 10038 (Feb. 21, 2012) ("2012 Rule"). See 79 Fed. Reg. 11450, 11453 (Mar. 5, 2014) (announcing that until such time as the Department finalizes a new wage methodology, the current wage methodology contained in 20 C.F.R. § 655.10(b), as set by the 2013 IFR, will remain unchanged and continue in effect); *Bayou Lawn & Landscape Services v. Solis*, Case 3:12-cv-00183-MCR-CJK, Order at 8 (ND FL Apr. 26, 2012) (enjoining DOL from implementing or enforcing the 2012 Rule), affirmed by *Bayou Lawn & Landscape Services v. Sec'y of Labor*, 713 F.3d 1080 (11th Cir. 2013); 77 Fed. Reg. 28764 (May 16, 2012) (announcing "the continuing effectiveness of the 2008 H-2B Rule until such time as further judicial or other action suspends or otherwise nullifies the order in the Bayou II litigation").

<sup>4</sup> I have reviewed and considered all testimony and exhibits admitted into the record. Reviewing authorities should not infer from my specific citations to some portions of witness testimony and items of evidence that I did not consider those things not specifically mentioned or cited.

<sup>5</sup> Tr. at 41-78.

<sup>6</sup> Tr. at 85-127.

<sup>7</sup> Tr. at 130-135.

<sup>8</sup> Tr. at 135-138.

<sup>9</sup> Tr. at 140-163.

Exhibits<sup>10</sup>

- Stipulations (JX) 1
- Administrator's Exhibits (AX) 1-2
- Respondent's Exhibits (RX) 1-10

My findings and conclusions are based upon the stipulations of counsel, the evidence introduced, my observations of the demeanor of the witnesses, and the arguments presented.

**STIPULATIONS**<sup>11</sup>

1. LWA was debarred for failure to comply with the H-2A regulation requiring placement of newspaper advertisements to recruit domestic workers.

**FACTUAL BACKGROUND**

Linda White and Associates (LWA) operated as an agent for its client agricultural employers, submitting H-2A applications to the Department of Labor on their behalf. It was owned by Linda and Craig White and had three employees, including Christy Cartaginense and Terri White. On 31 May 13, it was given notice of a pending debarment action, but filed no response. On 30 Jun 13 it was debarred for three years by the Administrator for violations of the H-2A regulations governing recruitment, specifically, providing false documentation of newspaper advertisements to recruit domestic workers.

Respondent was formed on 11 Jun 13 as a domestic LLC under the law of the State of Louisiana by Ms. Cartaginense. It is owned by Christy Cartaginense and Terri White, who are also its officers. It employs five people, including Christy Cartaginense and Terri White. Linda White has no involvement in Respondent. It conducted the same business as LWA with largely the same client base. Respondent was debarred on 4 Dec 13, when the Department of Labor determined that Respondent was the alter ego of LWA based on ten factors.

**ISSUES IN DISPUTE & POSITIONS OF THE PARTIES**

The Agency argues that Respondent is the alter ego or disguised continuance of LWA, a previously disbarred entity, and thus should also be disbarred. Respondent argues that it is a separate and distinct entity from LWA and should not be disbarred from operating as an H-2A agency company.

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<sup>10</sup> Counsel were cautioned that in the case of any exhibit in excess of 20 pages (which are considered to be an *en globo* collection of records) or deposition transcripts of witnesses who testified live, counsel must cite during the hearing or in their post hearing briefs to the specific page for that page to be considered a part of the record upon which the decision will be based. Tr. 5.

<sup>11</sup> Tr. at 22-23.

## LAW

### The H-2A Regulatory Framework

Under the H-2A program,<sup>12</sup> employers must follow a number of regulatory guidelines in order to bring nonimmigrant workers to the U.S. to perform agricultural work.<sup>13</sup> Prior to bringing nonimmigrant workers to the U.S., “an employer must first demonstrate . . . that there are not sufficient U.S. workers able, willing, and qualified to perform the work in the area of intended employment at the time needed and that the employment of foreign workers will not adversely affect the wages and working conditions of U.S. workers similarly employed.”<sup>14</sup>

The regulation defines the term employer as:

A person (including any . . . corporation . . .) that: (1) [h]as a place of business (physical location) in the U.S. . . . ; (2) [h]as an employer relationship . . . with respect to an H-2A worker or a worker in corresponding employment; and (3) [p]ossesses, for purposes of filing an Application for Temporary Employment Certification, a valid Federal Employer Identification Number (FEIN).<sup>15</sup>

Employers who fail to comply with the requirements may be barred from the program.<sup>16</sup> The regulations anticipate that a barred employer may attempt to reenter the program by making small changes and arguing it is a distinct entity, when in fact it remains essentially the same employer.

The regulations therefore provide that whether an employer is a successor in interest to or alter ego of another employer depends on a number of factors: (1) substantial continuity of the same business operations; (2) use of the same facilities; (3) continuity of the work force; (4) similarity of jobs and working conditions; (5) similarity of supervisory personnel, (6) whether the former management or owner retains a direct or indirect interest in the new enterprise; (7) similarity in machinery, equipment, and production methods; (8) similarity of products and services; and (9) the ability of the predecessor to provide relief. One important additional factor that is considered only when the prior employer was *debarred* for a violation of the regulations governing the H-2A program is the personal involvement of the new employer’s ownership, management, supervisors, and others associated with the firm in violation at issue.<sup>17</sup> All the foregoing factors should be considered in their totality when determining if an employer is a successor in interest, with no one factor being dispositive.<sup>18</sup>

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<sup>12</sup> 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184.

<sup>13</sup> 8 C.F.R. § 214.2(h)(6) and 20 C.F.R. § 655, Subpart B.

<sup>14</sup> 20 C.F.R. § 655.103(a).

<sup>15</sup> *Id.* at § 655.103 (b).

<sup>16</sup> *Id.* at § 655.182.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

The regulations also recognize that employers may use agents to file the required compliance documents and further defines the term agent as: “A legal entity or person . . . that: (1) [i]s authorized to act on behalf of the employer for temporary agricultural labor certification purposes. . . .”<sup>19</sup>

In order to prove the existence of an alter ego relationship of a corporate entity, the party seeking to disregard that corporate entity bears the burden of proof.<sup>20</sup> The standard of proof required is a preponderance of the evidence, which requires the party with the burden to show it is more likely than not that an alter ego relationship between the two entities exists.<sup>21</sup> If the burden is met, the alter ego entity may be debarred from conducting business if that entity is seeking to perpetuate injustice or fraud of the controlling entity.

## EVIDENCE

*John Rotterman testified at hearing in pertinent part:*<sup>22</sup>

He is a certifying officer in the H-2A program at the Chicago National Processing Center. He was peripherally involved in the initial Linda White debarment, but wasn't the CO on the case. The reason for that debarment was widespread fraud in the recruitment process. There were indications that ads had not been placed. Linda White did not respond to the notice of debarment, so after the 30-day appeal window closed, the three year debarment took effect.

The notice to Respondent said two things: (1) as a disguised continuance alter ego of Linda White and Associates' it was subject to that debarment and (2) their filing attesting that they were eligible to participate in the H-2A program was fraudulent and a separate violation.

Allowing a debarred entity to simply reincorporate would render the three-year ban worthless. When the issues arose with Respondent, they consulted legal counsel and looked at different legal tests. They cited a NLRB case in the debarment.<sup>23</sup>

The Notice of Deficiency asked for information to help Respondent cure its deficiencies: (1) the names and addresses of everyone residing at the location where the applications were coming from, (2) the nature of the relationships between the different parties, (3) evidence of Respondent's corporate doings, (4) what they filed with the state of Louisiana, (5) corporate minutes, (6) quarterly reports, (7) client lists, any clients they had derived that were not from Linda White and Associates, and (8) whether they had paid anything for the assets of Linda White and Associates. The responses led them to issue the Notice of Debarment.

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<sup>19</sup> *Id.*

<sup>20</sup> [In re Multiponics, Inc.](#), 622 F.2d 709, 724-25 (5th Cir. 1980).

<sup>21</sup> [Asarco LLC v. Ams. Mining Corp.](#), 396 B.R. 278, 317 (S.D. Tex. 2008).

<sup>22</sup> Tr. at 41-78, RX-1.

<sup>23</sup> AF 123-24.

Initially, Respondent's business was in the same place with the same fax number as Linda White, but they subsequently changed locations. The client list was significant, as were the letters to the existing client base in which Respondent explained it was restructuring the company and changing the name. They had a letter from a client saying they'd always enjoyed working with Linda White and her daughters and looked forward to continuing to do so. All the value with Linda White and Associates translated seamlessly to Respondent, though there was no payment for the assets.<sup>24</sup>

He did not think it was relevant whether or not Linda White's daughters were employees or contractors of Linda White and Associates. The description of their roles made their specific employment status insignificant. They were involved in running Linda White and Associates and were then involved in running Respondent. It doesn't matter whether or not Linda White was involved in running Respondent. The person Linda White was not debarred, the business entity of Linda White and Associates was. Everything they saw pointed to that entity continuing as an alter ego or mere continuance. The fact that Respondent later got an office space did not make a difference.

He thought it was fraud for Respondent to represent itself as an entity eligible to participate in the H-2A program, when in fact it was debarred. Based on the record, representing itself as a new entity may not have been malfeasance, but it may have been negligence, given all the factors that pointed to it being the same company.

He could find no factors indicating that Respondent was not an alter ego of Linda White and Associates. Respondent's registration as a new corporation under the laws of Louisiana was not a factor to show it wasn't an alter ego of Linda White and Associates. The isolated fact that there were new owners, new managers, and new employees of the company could be a factor tending to show no alter ego, but with the rest of the record, that didn't have much weight.

In response to the Notice of Deficiency, Respondents gave a new tax ID and new liability insurance. He contended that the establishment of a new entity was solely to avoid debarment. It wasn't in and of itself a separate and distinct entity. Based on the information he had, it seemed that Respondent had just changed the name from Linda White and Associates to Respondent.

Respondent's client list was ninety percent former Linda White and Associates clients. To the extent it was saying the substance of the company transferred over, the brand equity and goodwill would come with it, too.

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<sup>24</sup> AF 296, 119.

He believes the statement on page 119 of the AF by Terri White shows that she previously had a very large role in the operations of Linda White and Associates. This was the first debarment to come through the application process.<sup>25</sup>

If there was an intervening name change, it wouldn't make a difference in his assumption that it was actually referring to Linda White and Associates. Saying they restructured their company implies it still exists. The fact that Linda White's daughters were the owners of Respondent was not significant, it was one of the ways in which they initially determined there was a connection. There was no evidence that Terri or Christy were involved in violations of Linda White and Associates.

Respondent could have done more to suggest a separation: (1) if the points that they look for and the NOD had been addressed in a way that suggested that a fully realized new corporation had been created; (2) if there was more than just cursory articles of incorporation, (3) if it had some sort of a long term business plan that was distinct from what they were doing, (4) if it was showing how they were going to grow, and (5) if it would have had acknowledged the underlying fraud within Linda White and Associates. One of the tricky problems with the H-2A program is it's all after the fact. Maybe it could have marketed their knowledge and their client base to a different company so it would have been absorbed by someone that on its face was not subject to scrutiny.

***Christy Cartaginese testified at hearing and her records show in pertinent part:***<sup>26</sup>

In 2011, she started helping her mom at Linda White and Associates. She worked between 20 and 30 hours there, depending on what else she had going on. She got the names of the workers from the farmers and put them into a program, made a spreadsheet, called the farmers, and told them when the appointments for workers to interview at the consulate were made. She knew the requirement existed, but was not involved at all in the placement of advertisements in connection with any part of the H-2A program.

She was first paid a flat rate of \$500 a week, but got \$600 starting in 2013. She was never a shareholder, an officer, or a manager of any employees at Linda White and Associates. Only she, Linda, and Terri worked at Linda White and Associates. Linda White and Craig White, her parents, were the officers of Linda White and Associates. She knows that when her sister worked for Linda White and Associates, she would call the farmers when it was time to do a new application and would type them and mail them.

They decided to create Respondent when their mom got the notice of debarment. Terri can't work regular jobs because she has kids that need her all the time and they are both single mothers. She could back a company at the time so they thought it was a good idea. They thought they could do it, so they started their own company. Their plans included moving out of their mom's office, which was at her house, changing the name and running the company the way they wanted to run it.

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<sup>25</sup> AF 186.

<sup>26</sup> Tr. at 85-123; RX-2, 4, 9, 10; AX-1, 2.

She and her sister Terri incorporated Respondent on 11 or 13 Jun 13. Linda White and Craig White are not owners of Respondent and get no monetary benefits from it. When they first started, the address was at 23791 East Railroad for about three weeks. Now they're at 29724 South Magnolia Street. Respondent employs her, Terri, Molly White, Cathy Posey, and Christy Gordon. Just she and Terri worked for Linda White and Associates. Respondents had their own phone lines by August 2013.

She thinks Respondent has 129 clients now. When they formed the company after Linda White and Associates was debarred, they told those clients that Linda White had been debarred and that she and Terri decided to start their own company. They asked if the clients would like them to represent them, and some said yes. They also reached out to people who were not clients of Linda White and Associates.<sup>27</sup>

When they started up, the farmers thought it was just a name change, but they very explicitly let them know that their mom was out of business and she and Terri were starting their own company. They didn't want the name to just be their names and thought it sounded younger and cooler to call it Cajun Visa Company. They also called to let the farmers know they would be doing things their own way and the practices they may have encountered with anyone else in the past would be different. They put assurances in place that ads would run and things like that. They made it clear that they would try to make sure that the farmers understood more about the law instead of just relying on them, since the farmers would be attesting to everything.

They initially worked off a list of a very few numbers, but now they do it completely differently. They use ISERT and go through the phone book and send out letters all over the United States. A number of employers said they wanted to hire Respondent after Linda White and Associates was debarred. When the debarment took place, a letter went out to the masses, so they wanted to let people know they would be placing their own ads. Respondent would help them with the verbiage of the ad, but they would be placing it with their own credit cards. When they called people they said "your contract is coming up." Because farmers work by seasons, they know the time of year they have to call because they have to file so many days in advance. So she called the farmers and said "you have a new contract. It's time to start filing for your H-2A and Terri and I started our own company. Would you like us to represent you?"

Administrator's Exhibits 1 and 2, and Respondent's Exhibit 9 are letters of authorization to represent that the farmer has to send in. They found Exhibit 9 in an old folder of her mom's. She didn't make the documents. As far as she was concerned, you can go online to the ISERT and download people's paperwork and everyone uses the same. Dan Brimmer who worked for another agency, Adworks, created Exhibit 9. On ISERT, every single person's application is on the list so it's easy to find out whose people's clients are. They don't have to pay for that. When they worked for their mother, clients knew who they were. They worked very hard to separate themselves from Linda White, though people associated them with her.

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<sup>27</sup> AF 186.

She learned about the H-2A program after Katrina when she had to move in with her mother. Her bed was in her mom's office, so she heard a lot about it. When she started Respondent, there were aspects of the H-2A program she didn't know about and she learned everything online. She educates herself constantly because stuff changes all the time. Before starting Respondent, she knew ad placement had to happen, but she did not know the details.

Respondent has its own insurance policies that were not previously owned by Linda White and Associates. Respondent's bank accounts were never associated with Linda White and Associates. Neither Linda White nor her husband has ever worked for Respondent in any capacity. They don't get any money from it. Her father helped them move and he stops by every now and then. Her mom has stopped by once to pick up their kids for them. Linda White does not communicate with any clients of Respondent.

She doesn't know exactly how a fax was submitted to the Department of Labor that said "Linda White and Associates" on it, but she thinks maybe it was from a farmer refaxing something they already had to them. The fax numbers for the two companies are different, but they did use the same fax number during the initial period while they found a place to move into.

Workmen's comp certificates go from year to year and the insurance company has to put a name on it if they're going to mail you a copy. If it came from a farmer, it's possible that Linda White and Associate's name would appear as a certificate holder on workers' comp documents between May 2013 when she was debarred and May 2014.

The Department of Labor certified ten or more cases of theirs before they started denying them.

***Terri White testified at hearing and her records show in pertinent part.***<sup>28</sup>

She is a part owner of Respondent. She first started working for Linda White and Associates in August 2010, where she worked for 30-35 hours per week at minimum wage. She would contact farms to find out if they were going to use Linda White and Associates for their applications. Then Linda White would give her the information to type the applications once the farmers gave them the OK. The information was in the customers' files and she would then mail it to the farmer. Once it was received again in the office, Linda White would look it over and make sure everything was there and then they would start filing with the state in the necessary time frame. It was not within her role to verify any information, she just typed the contracts. She only interacted with the farmers if paperwork was missing. She did not place any ads on behalf of any farmers while she worked for Linda White and Associates. She knows the process because of the acceptance letters and what they stated had to be done, but Linda White oversaw all that. Linda White had the final say on applications submitted to the Department of Labor.

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<sup>28</sup> Tr. at 140-163; AX-1, 2; RX-9.

She did not place any ads. Once an acceptance letter came through, the folder was given to Linda White and she placed the ads. She lived at Linda White's home for a time and worked at the office inside the home. She only did what Linda White told her to do when it came to typing and sending information out and didn't learn much about the H-2A process. After two years, she knew what paperwork needed to be sent out. She knew what time to call the farmers.

Her responsibility was to make the application process easy for the farmer. If she needed something and the farmer was not available, she would contact their insurance agency directly. She was familiar with bits and pieces of the H-2A regulations, but her job was strictly to type contracts. Now she understands the regulations and does a lot of online research.

She got a phone call from a farmer while she was on vacation that someone had sent information trying to recruit them, and asked her what debarment was.<sup>29</sup> She didn't find out what her mom was debarred for until later, when she was required to send in tear sheets for the ads.<sup>30</sup>

At Respondent, she does everything except make appointments, which she doesn't have time for. She receives, types, and inputs applications daily. She makes sure ads were run. She contacts the farmers and goes over the rules and regulations. They check USDOL daily because things change frequently. She did not learn these procedures with Linda White. They are all things she developed on her own as an owner and manager of Respondent.

Linda White and Craig White have no interest in Respondent. They are not involved at all. She was never an owner or officer of Linda White and Associates.

She typed the letter of authorization for Delta Dairy for Respondent. She looked online and everybody's looked the same, so she just retyped what Linda White and Associates and what most other agents had previously used. Linda White had drafted the forms she used initially; she used a sample she was familiar with. Attachments to the ETA Form 790 include the assurance, the number of hours the workers will be working, the pay scale, the crops being grown, the housing directions, the work site, phone numbers, and most of the regulations that USDOL requires.<sup>31</sup>

If you look at ISERT and pull up other people's cases, they all use pretty much the same attachments. You don't have to register to look at other people's attachments. She looked at Linda White's sample to see the information in the attachment and make sure that the attachment she made fell within the regulations. She looked at ISERT and at other agents who had their stuff on there to verify they had the correct information.

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<sup>29</sup> AF 119.

<sup>30</sup> AF 44.

<sup>31</sup> AX-1, 2; RX-9.

Her mother's process was for her to type the information, contact the farmers within the time period and then she would input the documents to either the state or the USDOL.

The Respondent partnership pays her and her sister a salary. She is getting paid more than she did at Linda White and Associates. They did not receive any payments for cases that were started with Linda White and transferred over to Respondent.

***William Fletcher testified at hearing and his debarment statement shows in pertinent part:***<sup>32</sup>

He is a strawberry farmer. Linda White used to put together his H-2A applications. She was a hands-on manager and a strong presence in the office. Christy Cartaginese and Terri White would work on his cases when Linda White was handling them, but he doesn't think they were in charge of it. He switched to Respondent last summer when he got an email from Christy saying they weren't part of their mother's company anymore. It said they were starting their own company, explained they would be calling it Respondent, gave their address and phone number, and said they would appreciate his business. He now has a contract with Respondent for them to handle his H-2A applications. He has been to Respondent's office half a dozen times and has never seen Linda White or had her answer the phone. He has to provide the same documentation at roughly the same time, so other than the location, phone number, and personnel, it's really the same process to him.

***Keith Carpenter testified at hearing and his reports state in pertinent part:***<sup>33</sup>

He is a self-employed CPA and Respondent is his client. He prepares all their financial statements, payroll, and everything else. He started working with Respondent in October or November of 2013. He is not familiar with Linda White and Associates and never worked for them. He has never seen anything go to Linda White or Craig White from Respondent in terms of assets or liabilities. He sees all the checks written from Respondent. Terri and Christy have the equity in the business and the other three women are employees.

***The Notice of Debarment of LWA shows in pertinent part that:***<sup>34</sup>

LWA was issued a Notice of Debarment on 31 May 13, citing a violation of 20 C.F.R. § 655.182(d)(1)(iii) for failure to comply with the employers obligations to recruit U.S. workers. LWA was debarred from the H-2A labor certification program for a period of three years. The notice gave LWA 30 calendar days to file its rebuttal evidence or to request a hearing, otherwise the Notice would become the final decision of the OFLC Administrator on 30 Jun 13.

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<sup>32</sup> Tr. at 130-135, RX-7.

<sup>33</sup> Tr. at 135-138, RX-8.

<sup>34</sup> RX-1.

***Respondent's corporate records show in pertinent part that:***<sup>35</sup>

Respondent was incorporated under the laws of the state of Louisiana on 11 Jun 13. The Articles of Incorporation show Respondent Company, Inc. to be a business corporation in good standing. Both Ms. Christy Cartagine and Ms. Terri White are listed in the Articles as the registered agents of Respondent.

**ANALYSIS**

In order to debar Respondent from conducting its business as an H-2A agency for employers, the Administrator must prove by a preponderance of the evidence that Respondent is a successor in interest to LWA, a previously debarred company. Under the regulations, Respondent is not an “employer”, but is instead an “agent.” While there is a “successor in interest” test for employers, there is no equivalent test for agents. The parties suggested alternative tests including common law and NLRB tests that they argued should also be used to determine if Respondent was an alter ego/successor in interest of LWA. Given that the agents are acting on behalf of the employers, I found the most appropriate test to be regulatory “successor in interest” test that applies to employers.<sup>36</sup> That test applies nine factors to consider and an additional consideration specifically concerning debarment of the prior employer, which applies in this case.

**1. Substantial continuity of the same business operations**

Like LWA, Respondent acted as an agent to employers by submitting H-2A applications to the DOL, but that could be said of any firm that entered the same business. However, the majority of Respondent's clients were prior LWA clients and Respondent started in large part by taking over LWA's book of business, using a significant number of the same documents. Therefore, there was a substantial continuity of the same business operations between LWA and Respondent and this factor weighs in favor of finding an alter ego.

**2. Use of the same facilities**

Respondent began its operations in the offices of LWA for a short period of time, they immediately began looking for a new location and moved to a new office within a month. Respondent's use of LWA's facilities was only for a short amount of time. This factor weighs against alter ego.

**3. Continuity of the same work force**

Two of Respondent's five employees had any association with LWA. On the other hand, they constituted a majority of LWA's employees now working for Respondent. Therefore, I find this factor weighs slightly in favor of a finding of alter ego.

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<sup>35</sup> RX-2.

<sup>36</sup> 20 C.F.R. §655.103(b).

#### **4. Similarity of jobs and working conditions**

Since they were engaged in the same business, the jobs and working conditions were very similar in nature. Respondent did change their procedures and were sure to inform all employers of the USDOL regulations concerning the H-2A application process, including the requirement of advertisements. Therefore, that aspect of the working conditions of Respondent employees differed from those of LWA. I find that this factor does not weigh in favor or against a finding of alter ego.

#### **5. Similarity of supervisory personnel**

Linda and Craig White were the sole officers of LWA. Terri White and Christy Cartaginense are the sole officers of Respondent. The Administrator points to the fact that LWA was a small, three person company and therefore it was difficult to determine who had supervisory roles in the company. The Administrator also argues that Ms. Cartaginense had sole access to the appointment portion of the H-2A process while working for LWA, which shows her independence and supervision over her own work. However, Christy Cartaginense testified that she had no supervisory role and only worked 20-30 hours a week.<sup>37</sup>

The Administrator further argued that Terri White had a supervisory role at LWA because of her extensive knowledge of the H-2A application process and the seamless transition of filing H-2A applications that occurred when LWA was debarred and Respondent was formed. However, the H-2A application process is relatively simple to navigate online and her knowledge of the process is not enough evidence to infer a supervisory role in LWA.

Moreover, according to the testimony of Terri White, Christy Cartaginense, and former LWA client William Fletcher, Linda White was the sole manager of LWA. I found their testimony credible and that weight of the evidence shows that Linda White was the manager. Thus, this factor weighs against a finding of alter ego.

#### **6. Whether the former management or owners retain a direct or indirect interest in the new enterprise**

According to the testimony of Respondent's company accountant, Mr. Carpenter, the owners of LWA, Linda and Craig White, derive no benefit and have no residual interest in Respondent. The financial statements of Respondent corroborate his testimony. This factor weighs against a finding of alter ego.

#### **7. Similarity in machinery, equipment, and production methods**

This factor is closely related to the second and fourth factors. While Respondent used LWA's office phone numbers initially, they changed addresses within a month and changed phone numbers within two months after incorporating. Mr. Fletcher testified that he filed the same documents in the same manner with Respondent as he did with LWA, the only differences

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<sup>37</sup> Additionally, the appointment work Ms. Cartaginense performed did not have any relationship to the advertisement requirement that was not met by LWA and ultimately the reason for its debarment.

being the personnel, the location, and the phone number. However, I note that the nature of the business allows for little variation in required equipment or production methods. As a result, I find that this factor does not weigh in favor of or against a finding of alter ego.

## **8. Similarity of products and services**

Again, because both LWA and Respondent engaged in the same type of business, their products and services were very similar. Although Respondent argued that it provided a different product than LWA because it implemented new procedures and complied with H-2A regulations and requirements, ultimately the service they provided to employers was the same as LWA. Even though LWA did not comply with the advertisement requirement and Respondent did, both companies provided essentially the same service, helping employers file H-2A applications. Any company entering the market would be providing the same services. Therefore, this factor weighs only slightly in favor of a finding of alter ego.

## **9. The ability of the predecessor to provide relief**

LWA is a debarred entity for its violation of the advertisement requirement for H-2A applications. Respondent is facing debarment by the Administrator based on the argument that Respondent is the alter ego company of LWA. The principle behind this factor is if the predecessor company remains in existence to provide accountability, it is less likely the present company is an alter ego created to avoid liability. LWA is no longer an active H-2A agency and therefore cannot provide relief, however Respondent can be debarred, which is the Administrator's requested relief. I find this factor weighs slightly in favor of a finding of alter ego.

## **The Primary Consideration When Debarment Occurs**

When the prior company was debarred, the successor in interest test looks primarily at whether the new entity includes ownership, management, supervisors, or others who were associated with the violation that led to the debarment at issue.

Both Terri White and Christy Cartaginense credibly testified that they had no personal knowledge of LWA's non-compliance with the advertisement requirement for H-2A applications. While Terri White was responsible for much of the H-2A application process, she testified that she had no involvement in placing the advertisements because that was Linda White's job. Christy Cartaginense similarly testified that she dealt with the appointment process and had no involvement in the placement of advertisements. Both testified that placing advertisements was Linda White's responsibility and they had no personal knowledge of or involvement in the lack of compliance. The Certifying Officer conceded in his testimony that there was no evidence that either Terri White or Christy Cartaginense were involved in the violations at LWA.

The Administrator cited Respondent's letter to former LWA clients that said Respondent would be changing the advertisement processes in order to comply with the regulations. He suggested that showed Terri White and Christy Cartaginese were aware of the violations. However, at the time Respondent wrote to LWA's clients, LWA had already been debarred for failing to comply with the advertisement requirement. The primary consideration weighs against a finding of alter ego.

Given the primary consideration and the split among the other factors in the successor in interest test, I find that Respondent is not a successor in interest of LWA.<sup>38</sup>

### **ORDER**

Respondent is not a successor in interest of the previously debarred entity, LWA, and therefore shall not be debarred from conducting its business as an H-2A agency for any period of time due to LWA's misconduct.

**ORDERED** this 22<sup>nd</sup> day of December, 2014 at Covington, Louisiana.

**PATRICK M. ROSENOW**  
**Administrative Law Judge**

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<sup>38</sup> Additionally, the Administrator argued that if I decided that Respondent was an alter ego of LWA that Respondent should be debarred for three years based on its concealment of its identity in its attempt to avoid LWA's debarment. However, since I find that Respondent is *not* an alter ego of LWA, this argument is moot.

**NOTICE OF APPEAL RIGHTS:** Any party seeking review of this decision, including judicial review, shall file a Petition for Review (“Petition”) with the Administrative Review Board (“ARB”) within 30 days of the date of this decision. 20 C.F.R. § 655.182(f)(5). The ARB’s address is:

Administrative Review Board  
U.S. Department of Labor, Suite S-5220  
200 Constitution Avenue, NW  
Washington, DC 20210

Copies of the petition shall be served on all parties and on the undersigned Administrative Law Judge. 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 the ARB accepts the petition, this decision shall be stayed unless and until the ARB issues an order affirming the decision.