



Issue Date: 02 November 2012

Case No.: 2012-TNE-00007

In the Matter of

**ADMINISTRATOR,
WAGE AND HOUR DIVISION
U.S. DEPARTMENT OF LABOR**
Prosecuting Party

v.

POPSY POP, LLC.
Respondent

**FINAL ORDER ADOPTING PARTIES'
CONSENT FINDINGS**

This matter arises under the Immigration and Naturalization Act of 1952, P.L. 82-414, codified as amended at 8 U.S.C. § 1101, *et seq.* (the "INA"). Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by 8 U.S.C. § 1101(a)(15)(H)(ii)(b), 8 U.S.C. § 1184(c)(1), 8 U.S.C. § 11103(a)(6), 20 C.F.R. §§ 655.71-655 (2011),

On October 26, 2012, counsel for the Administrator submitted the parties' executed *Consent Findings*. The parties' filing contains the following stipulations, as well as Attachments A, B, and C, which are referenced and incorporated into the Consent Findings:

1. The issues resolved by these Consent Findings and Order occurred between February 1, 2010 and October 31, 2011.
2. On January 26, 2012, the Administrator issued a Determination Letter to Respondent identifying alleged violations of the H-2B regulations.
3. Within the time period provided by 20 C.F.R. § 655.71, Respondent filed a Request for Hearing with respect to the allegations of violations set forth in the January 26, 2012 Determination Letter.
4. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.

5. The entire record forming the basis on which these Consent Findings and Order is entered shall consist of the January 26, 2012 Determination Letter and attachments thereto, and these agreements and consents.
6. The parties to these Consent Findings and Order hereby waive all further procedural steps between themselves before the Administrative Law Judge.
7. The parties to these Consent Findings and Order hereby waive any right to appeal or contest the validity of these Consent Findings and Order.
8. All violations alleged in the January 26, 2012 Determination Letter issued by the Administrator shall be deemed fully resolved by these Consent Findings and Order.
9. 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.
10. Respondent withdraws its exception to the January 26, 2012 Determination Letter and agrees to pay \$34,199.54 in back wages due to H-2B employees as set forth in Attachment A to these Consent Findings and Order as follows: within fourteen days of the effective date of these Consent Findings and Order, Respondent will submit to the Administrator company checks in net amounts for each employee owed back wages as specified in Attachment A. Respondent will make the required payroll deductions for each employee. The payee for each check will be “[employee name] or Wage and Hour Division.” Respondent will forward the checks, along with the mailing address for each employee, to the U.S. Department of Labor, Wage and Hour Division, Curtis Center, 170 South Independence Mall West, Room 850 West, Philadelphia, PA 19106.
11. The Administrator hereby amends the January 26, 2012 Determination Letter to allege that Respondent owes civil money penalties in the total amount of \$48,000.00.
12. Respondent withdraws its exception to the January 26, 2012 Determination Letter and agrees to pay \$48,000.00 in civil money penalties plus statutory interest by certified check or money order payable to “Wage and Hour Division - Labor” as set forth on the attached payment schedule (Attachment B). On the face of each check, the memo line should read “H-2B CMP Case ID 1615541.” Respondent will forward its payments to the U.S. Department of Labor, Wage and Hour Division, Curtis Center, 170 South Independence Mall West, Room 850 West, Philadelphia, Pennsylvania 19106.
13. In the event that Respondent fails to make a payment of civil money penalties by the date specified in Attachment B, the entire amount shall become due and payable immediately without further notice or demand by the Administrator. Any defaulted balance shall be subject to the assessment of interest and penalty interest

at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996, P.L. 104-134, 110 Stat. 1321, 1358, and other delinquent charges and administrative costs shall also be assessed, In the event of default, the Administrator and/or Secretary of Labor intends to pursue enforcement of this agreement and/or any additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice. A decision by the Administrator not to seek immediate enforcement of this provision will not be deemed a waiver of this provision.

14. None of the agreements, stipulations or actions taken by Respondent in furtherance of these Consent Findings and Order shall be deemed an admission of any of the allegations contained in the January 26, 2012 Determination Letter. The agreements, stipulations and actions herein are made solely for the purpose of settling this matter economically and amicably without litigation and shall not be used for any purpose except for proceedings brought pursuant to these Consent Findings and Order.
15. Respondent agrees to comply in the future with all applicable provisions of the INA and its implementing regulations.
16. The Administrator agrees not to recommend to the Employment and Training Administration (ETA) that Respondent be debarred for the violations alleged in the January 26, 2012 Determination Letter. In consideration for the Administrator's forbearance on the issue of debarment, Respondent agrees to comply with the provisions outlined in the Enhanced Compliance Program (Attachment C), all the terms of which are expressly made part of these Consent Findings and Order.
17. Respondent agrees that this tribunal has jurisdiction to enforce all terms of the Enhanced Compliance Program.
18. In the event that Respondent fails to perform in accordance with the terms of these Consent Findings amid Order (including the Enhanced Compliance Program), other than *de minimis* violations as set forth in the Enhanced Compliance Program, Respondent agrees to accept a one-year debarment from the H-2B program without contest.
19. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order (including the Enhanced Compliance Program) is retained by the Office of Administrative Law Judges.
20. The Administrator may initiate enforcement proceedings for violations of these Consent Findings and Order (including the Enhanced Compliance Program) at any time by filing with the Administrative Law Judge a motion for an order of enforcement and sanctions.

21. 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.

I adopt the parties' stipulations as set forth above as my findings of fact. Accordingly, this matter is hereby **CLOSED**.

ADELE H. ODEGARD
Administrative Law Judge

Cherry Hill, New Jersey