



Issue Date: 10 March 2014

Case No.: 2013-TNE-00016

In the Matter of

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

Prosecuting Party

v.

INTERSTATE BUILDING MATERIALS, INC.

Respondent

**FINAL ORDER ADOPTING PARTIES'
CONSENT FINDINGS**

This matter arises under the Immigration and Nationality Act (“INA”) H-2B visa program, 8 U.S.C. § 1101(a)(15)(H)(ii)(b) and § 1184(c), and the implementing regulations promulgated at 20 C.F.R. § 655, Subpart A.

On February 27, 2014, counsel for the Administrator submitted the parties’ executed *Consent Findings*. The parties’ filing contains the following stipulations:

1. These Findings constitute a full and final resolution of all issues raised by the Administrator’s Determination Letter issued to Respondent on July 29, 2013 (“Determination Letter”). The issues resolved by these Consent Findings were identified initially during an investigation conducted by the Wage and Hour Division of the U.S. Department of Labor (“Wage and Hour”) covering the period of 2010 through 2011 (“relevant time period”), regarding Respondent’s compliance with the H-2B provisions of the INA, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), and the applicable regulations.

2. On July 29, 2013, 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 the investigation by Wage and Hour had determined that Respondent substantially failed to meet a condition on the Application, C-10102-49857, in violation of 20 C.F.R. § 655.60(b) and that Respondent willfully misrepresented a material fact on the Application, C-10102-49857 in violation of 20 C.F.R. § 655.60(a) of the H-2B regulations.

3. The Administrator ordered Respondent to pay back wages in the amount of \$22,258.60 to two U.S. workers.

4. The Administrator also assessed a total of \$12,000.00 in civil monetary penalties.

5. On August 8, 2013, within the time period provided by 20 C.F.R. § 655.71, Respondent filed a Request for Hearing. In its Request for Hearing, Respondent contested the Administrator's determination.

6. 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.

7. Respondent as a good faith resolution of its dispute with the Administrator concerning the alleged violations, has agreed to pay a total of \$21,500.00, that is \$14,300.00 in back wages, which will be distributed to two U.S. workers as indicated on the attached Schedule A, and civil monetary penalties of \$7,200.00. The Administrator agrees that the total amount due shall be paid in two installments. Within thirty days of the date that the Administrative Law Judge approves these Consent Findings by signing the Order in this case, Respondent will pay \$9,300 of the back wage amount (first installment). The remaining total balance of \$12,200.00, that is \$5,000.00 of back wages and \$7,200.00 of civil monetary penalties, is due by June 9, 2014 (second installment). These payments constitute full satisfaction of all back wages and civil monetary penalties assessed in this matter.

8. Respondent agrees to comply with applicable law regarding the H-2B program.

9. The parties agree that these Consent Findings do not affect the rights of the Respondent or the interested parties, if any, outside the scope of the INA and the regulations promulgated under the INA at 20 C.F.R. Part 655.

10. Respondent agrees to make payment in the form of a cashier's check or certified check made payable to "Wage and Hour Division, U.S. Department of Labor" (noting on the memo line "Case No. 2013-TNE-00016"), and to deliver payment to the United States Department of Labor, Wage and Hour Division, Attn: Mary Doughty, Suite 850W, 170 S. Independence Mall West, Philadelphia, PA 19106-3317, on or before the due date. Should Respondent fail to make the agreed payment within ten (10) days of the date scheduled, the entire amount shall immediately become due and payable, together with such additional collection and court costs as may be incurred by the Administrator in pursuing collection.

11. In the event of default, 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.

12. Respondent, without admitting to any of the violations contained in the Determination Letter, agrees to the entry of these Consent Findings in settlement of this case.

13. The Administrator and Respondent 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 into 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 any Order may be based shall consist solely of the Determination Letter and the Consent Findings;
- C. That the Administrator and Respondent waive any right to challenge or contest the validity of the Consent Findings and Order entered into in accordance with this agreement;
- D. All violations set forth in the Determination Letter shall be deemed fully resolved by these Consent Findings; and
- E. This Decree shall become final immediately upon approval of the Administrative Law Judge.

14. Now, therefore, agreement having been reached by the Administrator and Respondent as to all contested charges set forth in the Determination Letter, the parties further stipulate and agree that each party shall bear its own costs as to this proceeding. Specifically, each party agrees to bear its/his own attorneys' fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorneys' fees and costs 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**.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey

Schedule A: Back Wages Owed to U.S. Applicants

Name of H1-B Employee	Amount Due
Mr. Michael Zelasny	\$9,300.00
Mr. Robert Smith	\$5,000.00