



**Issue Date: 29 October 2014**

Case No.: 2014-TNE-11

In the Matter of:

ADMINISTRATOR, WAGE AND HOUR DIVISION,  
Prosecuting Party,

v.

CLAY LOWRY FORESTRY, INC.  
Respondent.

*Appearances:*

Clay Lowry  
President of Clay Lowry Services  
for the Respondent

Colleen Nabham, Esq.  
Marlin D. Carter, Esq.  
Office of the Solicitor  
for the Prosecuting Party

*Before:* Peter B. Silvain, Jr.  
Administrative Law Judge

**ORDER APPROVING CONSENT FINDINGS**

This proceeding arises under the H-2B visa provisions of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b) and 1184(c), the implementing regulations found at 20 C.F.R. §§ 655 Subpart A, and the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges found at 29 CFR Part 18A.<sup>1</sup> The Respondent has requested review of a determination by the Wage and Hour Division of the U.S. Department of Labor that the Respondent violated the INA.

On October 27, 2014, the parties filed “Consent Findings” with the OALJ. The Consent Findings state that the parties have reached a full and final resolution of all issues raised by the Administrator’s April 8, 2014 Determination Letter (“Determination Letter”). The Consent Findings state, in pertinent part, that:

- The Consent Findings constitute a full and final resolution of the action and all issues raised by the Determination Letter issued to Clay Lowry Forestry, Inc. (Respondent) on April 8, 2014, with respect to the employment of H-2B workers at its place of employment located at 2848 Highway 8 South, Hermitage, Arkansas 71647 and additional worksites as denoted in Addendum Section F of the Application for temporary employment certification.

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<sup>1</sup> 8 U.S.C. §§ 1101(a)(15)(H)(ii)(B) and 1184(c) (2012)

- From approximately January 7, 2013 to March 2013, Respondent employed a total of 37 H-2B workers. These workers are covered under the H-2B provisions of the INA.
- On April 8, 2014, the Wage and Hour Division issued a Determination Letter indicating that an investigation had yielded a finding that Respondent had failed to accurately specify the date of temporary need and the number of workers requested in its H2-B Application.
- On April 15, 2014, the Respondent filed an appeal of the Determination Letter to the Office of Administrative Law Judges.
- In consideration of the facts of the case and other pertinent litigation factors, the parties, without admitting any of the violation contained in the Determination Letter, agree that the Respondent will submit the U.S. Department of Labor, Wage and Hour Division, \$5,500.00 by November 27, 2014, as full and final satisfactions of all contested issues.
- The Parties agree that the undersigned's Order approving the parties Consent Findings will: 1) have the same force and effect as an Order made after a full hearing; 2) constitute, along with the Determination Letter and Agreement, the entire record of the case; 3) reflect the Respondent's withdraw of its contest of the violations expressed in the Determination Letter, and the resolution of all violations alleged therein; 4) be final and enforceable on signing of the Order; 5) waive any further procedural steps before the undersigned or the Administrative Review Board regarding the matters addressed in the Determination Letter and its appeal; 6) constitute a waiver by both parties to challenge the validity of the findings made in this Order.
- Both parties will be responsible for their own costs, fees and expenses derived from the prosecution and defense of this matter.

A review of the Consent Findings and Settlement Agreement shows that it complies with 20 C.F.R. § 18.9 and resolves all issues in this matter.

**IT IS THEREFORE ORDERED** that the Respondent hereby withdraws its exception to the April 8, 2014, Wage and Hour Division Determination Letter, and without admission of the allegations contained therein, shall pay \$5,500.00 by forwarding to the Counsel for the Prosecuting Party a certified check or money order, payable to "Wage and Hour Division, U.S. Department of Labor."

The request for Consent Findings submitted by the parties is **APPROVED and ADOPTED** as the findings of fact and conclusions of law of the Office of Administrative Law Judges, and shall constitute full, final, and complete adjudication of this proceeding. The parties are **ORDERED** to carry out and comply with the provisions of the Consent Findings in all respects.

PETER B. SILVAIN, JR.  
Administrative Law Judge