

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 21 May 2015

CASE NO.: 2015-TNE-00010

In the Matter of:

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

v.

SOUTHWEST COMMODITIES, LLC,
Respondent.

**ORDER GRANTING PROSECUTING PARTY'S MOTION
FOR VOLUNTARY DISMISSAL**

This proceeding arises from the Secretary of Labor's enforcement of Temporary Non-agricultural Visa ("H-2B") provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), as amended, and the implementing regulations set forth at 20 C.F.R. Part 655, Subpart A (2008).¹ On February 10, 2015, Acting District Director Robinson issued the *Administrator's Determination* outlining Respondent's specific violations and the remedy imposed for each violation.

On March 17, 2015, the U.S. Department of Labor, Chief Administrative Law Judge received a letter from Respondent, dated March 11, 2015, requesting an administrative hearing to review the *Administrator's Determination*.

¹ The regulations have been subject to recent court challenges that resulted in a preliminary injunction enjoining DOL from implementing it or enforcing it. The regulations found at 20 C.F.R. Part 655, Subpart A (2009), which were published in the Federal Register on December 19, 2008 ("2008 Rule"), 73 Fed. Reg. 78020, apply to this case. The Department of Labor ("DOL") indefinitely delayed implementation of the Final Rule published on February 21, 2012 ("2012 Rule"), 77 Fed. Reg. 10038, after the United States District Court for the Northern District of Florida issued a preliminary injunction enjoining DOL from implementing or enforcing it. *See* 77 Fed. Reg. 28764 (May 16, 2012) (announcing the continuing effectiveness of the 2008 Rule "until such time as further judicial or other action suspends or otherwise nullifies the order in the Bayou II litigation"); *Bayou Lawn & Landscape Services v. Solis*, Case 3:12-cv-00183, Order at 8 (N.D. Fla. Apr. 26, 2012) (issuing order temporarily enjoining DOL from implementing or enforcing the 2012 Rule), *affirmed by* 713 F.3d 1080 (11th Cir. 2013); *see also Bayou Lawn & Landscape Services v. Solis*, Case 3:12-cv-00183 (N.D. Fla. Dec. 18, 2014) (vacating the 2012 Rule and permanently enjoining DOL from enforcing it).

On April 27, 2015, I held a telephonic conference call with the parties to discuss some procedural matters and encouraged them to confer for the purpose of exploring possible settlement. By a transmittal letter dated May 8, 2015, but not received until May 19, 2015, the Prosecuting Party filed its Motion for Voluntary Dismissal without Prejudice (“Motion”). The Prosecuting Party seeks to voluntarily dismiss this matter so that it can issue a revised determination pursuant to 29 C.F.R. § 503.41 (2015) identifying the relevant violations of the I-129 petition and providing Respondent the opportunity to request a hearing pursuant to 29 C.F. R. § 503.43 (2015)².

I find good cause to **GRANT** the Motion. Therefore, the following Order shall enter:

1. This case is **DISMISSED**, without prejudice.

SO ORDERED.

TIMOTHY J. McGRATH
Administrative Law Judge

Boston, Massachusetts

² As a result of the aforementioned litigation, the DOL and the Department of Homeland Security jointly promulgated a new interim final rule on April 29, 2015, implementing the H-2B program. See 80 Fed. Reg. 24042 (Apr. 29, 2015). Following the publication of the interim final rule the court in Perez issued an order lifting the stay of the vacatur of DOL’s 2008 regulations, pursuant to which the instant proceeding was brought.