



Issue Date: 06 May 2015

Case No.: 2015-TNE-00006

In the Matter of

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

v.

CLARKE'S LANDSCAPING AND LAWNCARE, 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 May 1, 2015, the Administrator, U.S. Department of Labor, Wage and Hour Division ("Prosecuting Party") and Clarke's Landscaping and Lawncare, Inc. ("Respondent") submitted the parties' executed *Consent Findings*. The parties' filing contains the following stipulations:

1. This action arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § § 1101(a)(15)(H)(ii)(b) *et seq* and 1184(c)(1) ("INA" or "the Act"), and the regulations promulgated thereunder at 20 C.F.R. Part 655, Subpart A.
2. 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 2012 through 2014 ("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.
3. On December 23, 2014, the Administrator issued to Respondent a Determination Letter detailing its findings. A Summary of Violations and Remedies ("Summary") was attached to the Determination Letter. Three violations of the Act and regulations by Respondent were found by the Wage and Hour investigation, which were as follows:

- a. Respondent substantially failed to meet a condition of the Application, Employment and Training Administration Form 9142, in violation of 20 C.F.R. § 655.60(b) by failing to offer terms and working conditions to U.S. workers as required by 20 C.F.R. § 655.22(a).
 - b. Respondent substantially failed to meet a condition of the above-referenced Application by seeking or requiring H-2B workers to pay prohibited fees or expenses related to the Application in violation of 20 C.F.R. § 655.22(j).
 - c. Respondent substantially failed to meet a term or condition of the H-2B program by making improper deductions from the paychecks of workers in violation of 20 C.F.R. § 655.22(g)(l).
4. The Administrator assessed a total of \$42,646.10 in civil monetary penalties and found that back wages in the amount of \$51,365 were due to ten workers as a result of the violations. Respondent had previously agreed to pay the back wages and has done so.
 5. On January 5, 2015, 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 sole remaining issue of the Administrator's determination with regard to the civil money penalties.
 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 civil monetary penalties in the amount of \$30,000.00, within thirty days of the date that the Administrative Law Judge approves these Consent Findings by signing the Order in this case. This payment constitutes full satisfaction of all civil monetary penalties assessed in this matter.
 8. Respondent agrees that it is currently complying and will 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 NA and the regulations promulgated under the INA at 20 C.F.R. Part 655.

10. Respondent agrees to make payment of the agreed civil money penalties 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. 2015-TNE-00006"), 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 resolution of this case without contest.
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 state 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**. The parties' executed *Consent Findings* shall constitute the final Administrative Order in this case. The hearing scheduled for May 27, 2015 and the pre-hearing conference scheduled for May 6, 2015 are canceled.

SO ORDERED.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey