



Issue Date: 25 June 2015

Case No.: 2015-TNE-00001

In the Matter of:
**ADMINISTRATOR, WAGE AND HOUR DIVISION,
UNITED STATES DEPARTMENT OF LABOR,**

Prosecuting Party

v.

GREEN MOUNTAIN FORESTRY, LLC,

Respondent.

**ORDER GRANTING ADMINISTRATOR'S MOTION
FOR VOLUNTARY DISMISSAL**

The above-captioned matter arises from the Secretary of Labor's enforcement of H-2B provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), as amended ("INA"), and the implementing regulations set forth at 20 C.F.R. Part 655, Subpart A and 29 C.F.R. Part 503 (2009).¹

¹ The regulations have been subject to recent court challenges. The Department of Labor ("DOL") indefinitely delayed implementing 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 ("District Court") 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 March 4, 2015, the District Court also vacated the DOL's 2008 H-2B regulations and permanently enjoined the DOL from enforcing them. *See Perez v. Perez*, No. 14-cv-682 (N.D.Fla. Mar. 4, 2015) (2015 U.S. Dist. LEXIS 27606). On March 13, 2015, Administrative Law Judge Stephen R. Henley put all pending H-2B temporary labor certification matters in abeyance until further notice while the DOL considered its options in light of the District Court's decision in *Perez v. Perez*. On March 19, 2015, the Certifying Officer filed a status report with BALCA, stating that the District Court granted the Secretary of Labor's motion requesting a stay of the District Court's injunction order until and including April 15, 2015. On March 20, 2015, Judge Henley issued an order lifting the stay in all pending H-2B temporary labor certification matters.

In a letter dated August 29, 2014, the Department of Labor's ("DOL") Administrator of the Wage and Hour Division ("Administrator") issued a determination letter against Green Mountain Forestry, LLC ("Respondent"). Following an investigation pursuant to the H-2B provisions of the INA, the Administrator determined the Respondent failed to meet a condition of its *Application for Temporary Employment Certification*. By letter dated October 16, 2014, the Respondent filed a Request for Hearing and Motion to Dismiss. On November 21, 2014, I issued a Preliminary Order to schedule a conference call.

The parties then filed a series of motions, largely because of recent court challenges to the regulations governing this case.² On January 5, 2014, the Respondent filed a Notice of Related Proceeding regarding the District Court's decision in *Perez v. Perez*. On December 26, 2014, the Administrator filed a Response in Opposition to Respondent's Motion to Dismiss for Failure to State a Claim and a Proposed Order. On January 9, 2015, the Administrator filed its Response to the Respondent's Notice of Related Proceeding and a Proposed Order. The same day, the Administrator also filed a Request for Leave to Submit Sur-Reply to Respondent's Reply Brief in Support of Motion to Dismiss and a Proposed Order. On January 13, 2015, the Administrator filed a Response to the Notice of Related Proceeding. On March 30, 2015, the Administrator filed a Response in Opposition to Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Stay Discovery Pending Decision, requesting that this matter be stayed pending the issuance of a joint Interim Final Rule by the DOL and the Department of Homeland Security ("DHS"). On April 30, 2015, the Respondent filed a Notice of Injunction, notifying the Court that on April 30, 2015, the District Court lifted the partial vacatur and stay of the injunction it entered on April 15, 2015.

By letter dated May 20, 2015, the Administrator filed a Motion for Voluntary Dismissal Without Prejudice so that it can issue a revised determination pursuant to 29 C.F.R. § 503.41 (2015).³ On June 15, 2015, the Respondent responded and requested that this matter be dismissed, but asked the Court not to specify whether the dismissal is with or without prejudice. On June 23, 2015, the Administrator filed a Request to Submit Response in Opposition to Respondent's Statement of Position.⁴ After due consideration, I find good cause to grant the Administrator's motion to dismiss this case without prejudice.⁵

² *See id.*

³ On April 29, 2015, the DOL and the DHS jointly published an Interim Final Rule amending the standards and procedures that govern the H-2B temporary labor certification program. *See* 80 Fed. Reg. 24042 (Apr. 29, 2015). The 2015 Interim Final Rule does not apply to pending TNE cases; enforcement functions carried out by the Wage and Hour Division under this rule apply only "to the employment of any H-2B worker and any worker in corresponding employment as the result of an *Application for Temporary Employment Certification* filed with the Department of Labor on or after April 29, 2015." 80 Fed. Reg. 24042, 24131, to be codified at 29 C.F.R. § 503.1(c). On April 30, 2015, after the Interim Final Rule was published, the District Court in *Perez v. Perez* issued an order lifting the stay of the vacatur of DOL's 2008 regulations.

⁴ The Administrator has already made its position clear. Therefore, I hereby deny the Administrator's June 23, 2015 Request to Submit Response in Opposition to Respondent's Statement of Position.

⁵ The Court need not decide now whether the Administrator has the authority to issue a revised determination.

It is hereby **ORDERED** that the Administrator's request is **GRANTED** and this case is **DISMISSED** without prejudice.

John P. Sellers, III
Administrative Law Judge