

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 05 June 2015**

**CASE NO.: 2015-TNE-7**

**IN THE MATTER OF**

**ADMINISTRATOR, WAGE AND HOUR DIVISION**

**Prosecuting Party/Complainant**

**v.**

**HOOVER LANDSCAPE, INC.**

**Respondent**

**ORDER OF DISMISSAL**

The above-captioned matter arises from the Secretary of Labor's enforcement of H-2B provisions of the Immigration and Nationality Act ("INA"), 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 (2012) and 29 C.F.R. Part 503.

The Administrator, Wage and Hour Division ("Administrator") of the Department of Labor ("DOL"), issued a determination to Hoover Landscape, Inc. ("Respondent") via letter, stating that Respondent was found to be in violation of certain H-2B provisions of the INA (regarding an Application for Temporary Employment Certification) by failing to pay the offered wage rate which equals or exceeds the highest of the prevailing wage, Federal, State or local minimum wage.

By letter dated January 13, 2015, Respondent timely requested a hearing before the DOL Office of Administrative Law Judges ("OALJ"), disputing the determination of back wages due and Civil Money Penalties.

Upon referral of this matter to the OALJ, it was assigned to me on or about January 2015. I issued a Notice of Hearing and Pre-Hearing Order on January 23, 2015, and scheduled a hearing for June 16, 2015 in Dallas, Texas. On April 17, 2015, I issued an Order Rescheduling Hearing for November 5, 2015, in Dallas, Texas.

By motion dated June 1, 2015, counsel for the Administrator filed "Administrator's Motion for Voluntary Dismissal Without Prejudice" requesting "a voluntary dismissal of this action without prejudice 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)." To date, Respondent has not filed a response.

Upon due consideration, I construe the Administrator's Motion as a withdrawal of the determination outlined in the Administrator's letter to Respondent. Accordingly, the Administrator's Motion is **GRANTED**, the hearing scheduled for November 5, 2015 in Dallas, Texas is **CANCELLED** and this matter is **DISMISSED** without prejudice.<sup>1</sup>

**ORDERED** this 5<sup>th</sup> day of June, 2015, at Covington, Louisiana.

LEE J. ROMERO, JR.  
Administrative Law Judge

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<sup>1</sup> The Court need not decide now whether the Administrator has the authority to issue a "revised determination" under the facts of this case.