



**Issue Date: 18 May 2015**

**Case Number: 2015-TNE-00009**

*In the Matter of:*

**ADMINISTRATOR, WAGE AND HOUR DIVISION,**

*Prosecuting Party,*

v.

**SIGNATURE 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 Signature Landscape Inc. ("Respondent") via letter dated January 27, 2015, 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; failing to comply with Federal, State, and local employment-related laws and regulations including health and safety laws during the period of employment; and failing to accurately specify on the Application the date of temporary need and number of worker positions requested.

By letter dated January 30, 2015, Respondent timely requested a hearing before the DOL Office of Administrative Law Judges ("OALJ"), and indicated that it agreed with the back wage calculations of \$31,022.91 to the H-2B nonimmigrant workers and \$8,328.53 to the U.S. workers and would be processing those checks in the next 30 days. However, Respondent submitted the penalties imposed were "excessive, redundant and did not take into consideration the complete set of circumstances."

Upon referral of this matter to the OALJ, it was assigned to me on or about February 10, 2015. I issued a notice of hearing and pre-hearing order on February 12, 2015 and scheduled a hearing for August 18, 2015 in Kansas City, Missouri. On March 13, 2015, I issued an order Staying the Proceedings based on the Prosecuting Party's request for a two week stay to review a federal

district court order vacating the Department of Labor's 2008 H-2B regulations and enjoining their enforcement.<sup>1</sup> I issued an order lifting the stay on March 31, 2015 upon the Prosecuting Party's notification that the federal district court in *Perez* had stayed the effect of its judgement until April 15, 2015 and then again to May 15, 2015.

By motion dated May 8, 2015, counsel for the Administrator filed "*Prosecuting Party'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 dated January 27, 2015. Accordingly, the Administrator's Motion is GRANTED, the hearing scheduled for August 18, 2015 in Kansas City, Missouri is CANCELLED and this matter is DISMISSED without prejudice.<sup>2</sup>

**SO ORDERED:**

**STEPHEN R. HENLEY**  
Administrative Law Judge

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<sup>1</sup> See *Perez v. Perez*, No 14-cv-682 (N.D. Fla. Mar. 4, 2015). DOL subsequently jointly promulgated an interim final rule with the Department of Homeland Security on April 29, 2015 implementing the H-2B program.

<sup>2</sup> The Court need not decide now whether the Administrator has the authority to issue a "revised determination" under the facts of this case.