



Issue Date: 28 November 2017

OALJ Case No: 2017-TNE-00006

ETA Case No: C-12044-58140

WHD No: 1695668

In the Matter of:

J&W SEAFOOD OF VIRGINIA, INC.,

Employer.

DECISION AND ORDER ON CONSENT FINDINGS

This case arises out of enforcement of the labor certification for temporary and seasonal agricultural employment of nonimmigrant foreign workers (H-2B workers) under the Immigration and Nationality Act (INA), as amended, 8 U.S.C. §1101, et seq., and its implementing regulations at 20 CFR Part 655, Subpart A.

By correspondence dated January 19, 2017, the Regional Administrator, Wage and Hour Division of the U.S. Department of Labor notified Respondent that an investigation under the INA involving an Applications for Temporary Employment Certification covering the period from May 15, 2011 to December 31, 2013 indicated that the Respondent had employed approximately 30 workers covered by the H-2B provisions of the INA and

“failed to comply with the accuracy of temporary need requirement failed to accurately specify the number of worker positions requested on the I-129 petition or 9142 Application” in violation of 20 CFR §655.22(n) in both 2012 and 2013.

A civil money penalty of \$10,000.00 was assessed. The Respondent filed a timely request for a de novo hearing of the Administrator’s actions.

On November 27, 2018, the Parties filed joint stipulations in support of a consent finding to constitute a full and final resolution of all issues raised by the Administrator’s Determination Letter issued to Respondent on January 19, 2017. The Parties have agreed and stipulated:

1. In 2012 and 2013, Respondent employed approximately 30 workers covered by the H-2B provisions of the Immigration and Naturalization Act (“INA” or “Act”), 8 U.S.C. §§ 1101 et seq. and the 2008 implementing regulations at 20 C.F.R. §§ 655 et seq. and 29 C.F.R. Part 503.
2. On January 19, 2017, the Wage and Hour Division issued a Determination Letter to Respondent that detailed its findings from an investigation of possible violations under Temporary Employment Certifications C-12044-58140 (2012) and H-400-12045-508646 (2013).
3. A Summary of Violations and Remedies (“Summary”) was attached to the Determination Letter and stated that Respondent “failed to accurately specify the number of worker positions requested on the I-129 petition or 9142 Application” in violation of 20 CFR §655.22(n) in both 2012 and 2013.
4. The summary also notified Respondent that civil money penalties in the amount of \$5,000.00 per year for both 2012 and 2013 were assessed for these alleged violations, resulting in a total penalty amount of \$10,000.00.
5. On February 16, 2017, Respondent filed an administrative appeal of the Determination Letter, disputing the Administrator’s determination and thereby requested a hearing.
6. Subsequently, Counsel for the Administrator and Respondent conducted settlement discussions regarding this matter.
7. Without admitting or denying the allegations, Respondent will pay \$2,500.00 in resolution of the civil money penalties assessed for the alleged violation of 20 C.F.R. § 655.22(n). Respondent will pay this amount within thirty (30) days of the date that the Administrative Law Judge approves these Consent Findings by signing the Order in this case.
8. Payment will be made by certified check, cashier’s check or money order payable to: “Wage and Hour Division – U.S. Department of Labor” and mailed or delivered to this address:

Northeast Regional Office
The Curtis Center, Suite 850 West
170 S. Independence Mall West
Philadelphia, PA 19106

9. This debt is subject to assessment of interest, administrative cost charges, and penalties in accordance with the Debt Collection Improvement Act of 1996. Interest will be assessed at the Treasury Tax and loan account rate on any principal that becomes delinquent. The rate is currently 1.0%. A penalty at the rate of 6.0% will be assessed on any portion of the debt remaining delinquent for more than 90 days.

10. The Parties specifically agree that each party shall bear its own attorneys' fees, costs and other expenses incurred by such party in connection with any stage 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.
11. The Administrator and Respondents hereby consent that the above Consent Findings and 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, the Respondent's request for hearing regarding the Determination Letter, and the Consent Findings;
 - C. That the Administrator and Respondents 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 alleged and civil money penalties assessed in the Determination Letter shall be deemed fully resolved by these Consent Findings; and,
 - E. This Order shall become final immediately upon approval by the Administrative Law Judge.

Upon review, **IT IS HEREBY ORDERED** that **the Consent Findings are ADOPTED AND APPROVED** as the final administrative Order pursuant to the provisions of 29 CFR §655.75 and §655.72(a) and as set forth herein. This Order is effective upon the date of issue set forth.

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia