

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

Issue Date: 15 September 2017

CASE NO.: 2017-TNE-00016

In the Matter of:

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

v.

TOADFLAX NURSERY, LLC,
Respondent.

ORDER APPROVING CONSENT FINDINGS

This proceeding arises from the Secretary of Labor's enforcement of Temporary Non-agricultural Visa ("H-2B") provisions of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), 11184(c)(14) (hereinafter "the Act") and 20 C.F.R. 655, subpart A, and 29 C.F.R. Part 503.

On September 14, 2017, the parties filed their duly executed proposed "Consent Findings and Order." Upon review of the agreement I find the terms are fair and reasonable and in substantial compliance with 20 C.F.R. §18.71 and 29 C.F.R. §503.43(b) and it is approved.

Pursuant to the parties' agreement the following Order shall enter:

- (1) The Consent Findings are APPROVED and the terms are adopted and incorporated herein by reference; those terms are as follows:
- (2) On June 29, 2017, the Administrator of the Wage and Hour Division, United States Department of Labor, issued a determination letter identifying Respondent's alleged violations of the H2-B provisions of the Act;
- (3) Respondent has paid in full \$23,659.98 in assessed unpaid wages owed to 10 workers, an amount that included back wages assessed against Respondent for violations of the Fair Labor Standards Act;
- (4) On July 26, 2017, Respondent made a timely request for a hearing challenging the Administrator's determination;

- (5) The parties subsequently entered into negotiations designed to resolve this matter without the need for further litigation. The parties agree to resolve the matter as follows:
 - a. The Administrator amends its determination letter to allege Respondent owes a civil monetary penalty of \$11,000.00, plus applicable interest.
 - b. Respondent, without admitting or denying any violations of law, agrees to pay civil money penalties (\$11,000.00 plus \$13.76 interest), to the Wage and Hour Division, in four installments on or before September 15, 2017, October 15, 2017, November 15, 2017, and December 15, 2017;
 - c. In the event Respondent fails to make any installment payment within ten days of the due date(s) set forth in this agreement, the full total of civil monetary penalties shall become due immediately, less any civil money penalties amounts already paid pursuant to these Consent Findings; and
 - d. Respondent agrees to comply in all respects with the Act and applicable regulations in the future.
- (6) Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of the Consent Findings, is retained by the U.S. Department of Labor, Office of Administrative Law Judges;
- (7) The entire record upon which the Order issued by the Court is based shall consist of the Administrator's determination letter and attachments thereto, Respondent's request for a hearing, and this agreement;
- (8) The parties waive any further procedural steps before the Administrative Law Judge and waive any right to challenge or contest the validity of the Consent Findings and any Order issued in accordance with this agreement;
- (9) The Consent Findings shall fully and finally resolve all outstanding issues between the parties that were raised, or reasonably could have been raised, in connection with the Administrator's determination letter of June 29, 2017;
- (10) The Consent Findings and the Order issued in this matter shall have the same force and effect as an order made after a full hearing;
- (11) Each party shall bear its own costs, attorneys' fees and other expenses incurred by such party in connection with any stage of this proceeding; and
- (12) The Order issued in accordance with this Consent Findings shall constitute the Final Administrative Order in this case.

SO ORDERED.

Boston, Massachusetts

TIMOTHY J. McGRATH
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Any party seeking review of this decision and order, including judicial review, shall file a Petition for Review (“Petition”) with the Administrative Review Board (“ARB”). The ARB must receive the Petition within 30 calendar days of the date of this decision and order. 20 C.F.R. § 76(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Copies of the Petition should be served on all parties and on the undersigned Administrative Law Judge. No particular form is prescribed for the Petition; however, any such petition shall:

- (1) Be dated;
- (2) Be typewritten or legibly written;
- (3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;
- (4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;
- (5) Be signed by the party filing the petition or by an authorized representative of such party;
- (6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and
- (7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the ARB in determining whether review is warranted.

If filing paper copies, you must file an original and four copies of the petition for review with the Board. If you e-File your petition, only one copy need be uploaded.

20 C.F.R. § 655.76(b). If the ARB determines that it will review this decision and order, it will issue a notice specifying the issue or issues to be reviewed; the form in which submissions shall be made by the parties (*e.g.*, briefs); and the time within which such submissions shall be made. 20 C.F.R. § 655.76(e). When filing any document with the ARB, the party must file an original and two copies of the document. 20 C.F.R. § 655.76(f).