

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 18 December 2018**

CASE NO.: 2018-TNE-28

In the Matter of:

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

v.

HILLENMEYER NURSERIES, INC., dba  
STEPHEN HILLENMEYER LANDSCAPE SERVICES  
Respondent

**DECISION AND ORDER APPROVING  
SETTLEMENT AGREEMENT AND CANCELLING HEARING**

The above matter arises under the H 2-B temporary non-agricultural visa provisions of the Immigration and Nationality Act (“the Act” or “INA”), as amended, 8 U.S.C. § 1101 *et seq.*, and the implementing regulations promulgated thereunder at 20 C.F.R. Part 655, Subpart A and 29 C.F.R. Part 503. A hearing in this case is currently scheduled to begin on April 16, 2019 in Lexington, Kentucky. On November 30, 2018 I was notified that the parties reached an agreement to resolve the matter without a hearing when I received the parties’ executed Settlement Agreement, constituting final resolution of the matter which are fully incorporated and adopted herein by reference.

As indicated in the Settlement Agreement, the matter stems from an investigation conducted by the Wage and Hour Division (“WHD”) of the U.S. Department of Labor (“DOL”), regarding Respondent’s compliance with H-2B provisions of the INA, 8 U.S.C. § 1101(a)(15)(H)(i)(b). According to the Settlement Agreement, the WHD investigation revealed that Respondent, Hillenmeyer Nurseries, Inc., dba Stephen Hillenmeyer Landscape Services, (“Respondent” or “Hillenmeyer”) substantially failed to comply with the offered wage and by making impermissible deductions and the Administrator, WHD, thereafter issued a Determination letter dated May 17, 2018, detailing its related findings. The Administrator determined that \$26,304.19 in back wages was due eleven H-2B nonimmigrant workers. The Administrator assessed \$9,997.40 in civil money penalties for the violations.

Respondent, without admitting the allegations of the complainant, now wishes to resolve this matter by entering into this Settlement Agreement.

29 C.F.R. Part 503, Subpart C prescribes the administrative appeals process applicable here and grants the Office of Administrative Law Judges (“OALJ”) the authority to conduct hearings on the Administrator’s determinations regarding enforcement of the H-2B program, including the assessment of civil money penalties or back pay. 29 C.F.R. §§503.43, 503.46. If the parties reach a settlement resolving the case after initiation of proceedings before OALJ, they may submit an agreement containing consent findings and an order to OALJ for approval pursuant to § 503.49. Such an agreement must contain certain provisions required by § 503.49(b), including a waiver of any further procedural steps before OALJ and a waiver of any right to challenge or contest the validity of the agreed-on findings and order. Within thirty days of submission of such agreement, the administrative law judge, “will, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.” *Id.* § 503.49.

Here, Respondent timely requested a hearing, the matter was transmitted for hearing to OALJ, and subsequently assigned to me for hearing. Although scheduled, a hearing has not yet been held. I have reviewed the provisions of the parties’ agreed upon Settlement Agreement under § 503.49. Upon review, the parties’ agreed upon terms of the Settlement Agreement provide for the full resolution of the violations set forth in the Administrator’s Determination and further address and include the requirements of § 503.49.<sup>1</sup>

Accordingly, after review and consideration, I find the agreed upon terms of the parties’ executed Settlement Agreement conform to the requirements of § 503.49 and that all issues in contest between the parties have been resolved. It is therefore ORDERED that the Settlement Agreement is approved, adopted and incorporated in full into this Order. A copy of the executed Settlement Agreement is attached hereto. It is further ORDERED that the Settlement Agreement and this Order shall constitute the final Administrative Order and complete adjudication of this proceeding. The hearing scheduled for April 16, 2019 is CANCELLED.

**SO ORDERED.**

DREW A. SWANK  
Administrative Law Judge

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<sup>1</sup> Specifically, the Settlement Agreement and Order submitted by the parties provide: (1) that the order will have the same force and effect as an order made after full hearing; (2) that the entire record on which any order may be based will consist solely of the notice of administrative determination, and the Settlement Agreement; (3) a waiver of any further procedural steps before the ALJ; and (4) a waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement. 29 C.F.R. §503.49(b). These requirements are therefore fulfilled in the instant Settlement Agreement.