



Issue Date: 01 November 2018

Case No.: 2018-TNE-00018

In the Matter of:

**ADMINISTRATOR, WAGE AND HOUR DIVISION,
U.S. DEPARTMENT OF LABOR,**
Prosecuting Party,

v.

UNTIEDT'S VEGETABLE FARM, INC.,
Respondent.

DECISION AND ORDER APPROVING CONSENT FINDINGS

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 was scheduled to begin on October 31, 2018. On September 20, 2018 I was notified that the parties reached an agreement to resolve the matter without a hearing. On October 31, 2018, I received the parties' executed Consent Findings, which constitute final resolution of all of the matters and are fully incorporated and adopted herein by reference.

As indicated in the Consent Findings, the matter stems from an investigation conducted by the Wage and Hour Division ("WHD") of the Department of Labor ("DOL") regarding Respondent's compliance with H-2B provisions of the INA, 8 U.S.C. § 1101(a)(15)(H)(ii)(b) and 8 U.S.C. § 1184(c). According to the Consent Findings, the WHD investigation revealed that Untiedt's Vegetable Farm, Inc., ("Respondent") substantially failed to comply with the terms and conditions of the subject working conditions and material facts on its Application for Temporary Employment Certification, and the Administrator, WHD, thereafter issued a Determination letter dated January 25, 2018, detailing its related findings. The Administrator assessed a civil money penalty of \$14,530.36 and found back wages of \$8,958.01 due to 10 H2-B workers as a result of its findings. While Respondent contested the Administrator's determination regarding its compliance with the H-2B provisions of the INA as set forth in the Determination Letter, the parties state that all issues have been resolved and a hearing is no longer required; agreed that the entire record upon which any final order may be based shall, pursuant to 29 C.F.R. § 18.71(b)(2), consist solely of the Determination Letter and Consent Findings; and waive all further procedural rights as provided in 29 C.F.R. § 18.71(b)(3) and (4).

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 it was 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 Consent Findings under § 503.49. Upon review, the parties’ agreed upon terms of the Consent Findings provide for the full resolution of the violations set forth in the Administrator’s Determination and further address and include the requirements of § 503.49.¹

Accordingly, after review and consideration, I find the agreed upon terms of the parties’ executed Consent Findings 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 Consent Findings are approved, adopted and incorporated in full into this Order and the parties shall carry out the terms specified therein. A copy of the executed Consent Findings is attached hereto. It is further **ORDERED** that the Consent Findings and this Order shall constitute the final Administrative Order and complete adjudication of this proceeding.

SO ORDERED.

MORRIS D. DAVIS
Administrative Law Judge

¹ Specifically, the Consent Findings 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 Consent Findings; (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 Consent Findings.