



Issue Date: 26 March 2019

Case No.: 2019-TNE-00002

In the Matter of

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

Prosecuting Party

v.

HOPES RACING STABLE

Respondent

DECISION AND ORDER APPROVING CONSENT FINDINGS

This matter arises from the request for hearing filed by Hopes Racing Stable (“Respondent”) regarding the determination of the Administrator of the Wage and Hour Division (“Administrator”) issued by letter dated September 6, 2018. That determination 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 its implementing regulations set forth at 20 C.F.R. Part 655, Subpart A, and 29 C.F.R. Part 503.

This matter is currently scheduled for a hearing on March 28, 2019. On March 20, 2018, counsel for the Administrator submitted the parties’ executed Consent Findings, which provide as follows:

1. This action arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1101 (“INA” or “the Act”), and the regulations promulgated thereunder at 20 C.F.R. Part 655, *et seq.* and 29 C.F.R. § 503, *et seq.* Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by § 212(n)(2) of the Act, 8 U.S.C. § 1182(n)(2), and the applicable regulations.
2. The issues resolved by these Consent Findings were initially identified during an investigation conducted by the Wage and Hour Division of the U.S. Department of Labor (“Wage and Hour”) regarding Respondent’s compliance with the H-2B provisions of the INA, 8 U.S.C. § 101(a)(15)(H)(ii)(b), and the applicable regulations.
3. On June 8, 2014 Respondent filed an Application for Temporary Employment Certification (“TEC”) (Form ETA 9142 and Appendix B) H-400-14142-160407 that covered the period of September 15, 2014 through July 15, 2015. On

September 9, 2015, Respondent filed TEC H-400-15166-409617 that covered the period of October 1, 2015 through July 1, 2016. On July 16, 2015 Respondent filed a Petition for Nonimmigrant Worker (Form I-129) EAC 14-203-52029 that covered the period of September 15, 2014 through July 15, 2015. On September 16, 2015, Respondent filed a Petition for Nonimmigrant Worker (Form I-129) EAC 15-248-51083 that covered the time period of October 1, 2015 through July 1, 2016.

4. On September 6, 2018, the Administrator issued a Determination Letter to Respondent which detailed its findings with regard to the TECs and Form I-129s referenced in paragraph 3 above. A Summary of Violations and Remedies was attached to the Determination Letter. The Summary of Violations and Remedies stated that the investigation by Wage and Hour determined that the following violations of the H-2B provisions of the INA occurred:
 - A. The employer's offered wage did not equal or exceed the highest of the prevailing wage, Federal, State, or local minimum wage and/or the employer failed to pay the wage listed on the I-129 Petition or 9142 Application in violation of Attestation #5, 20 C.F.R. § 655.22(e) and Part 5, questions 9-10 of Form I-129.
 - B. The employer failed to notify USCIS or ETA within the required time period of H-2B workers whose employment was terminated more than 30 days prior to the end of the contract in violation of Attestation #11, 20 C.F.R. § 655.22(f), and the H-Supplement, Section 2, page 17 of the Form I-120.
 - C. The employer failed to accurately specify on the I-129 Petition or 9142 Application the number of workers needed and reasons for temporary need in violation of Attestation #13 and 20 C.F.R. § 655.22(n).
 - D. The employer substantially failed to comply with obligation to pay the highest of the prevailing wage or the federal, state or local minimum wage, or the employer failed to pay the wage listed on the I-129 Petition or 9142 Application in violation of Attestation #5, 29 C.F.R. § 503.16(a)(1), 29 C.F.R. § 503.16(a)(4), 29 C.F.R. § 503.16(b) and Part 5, questions 9-10 of Form I-129.
 - E. The employer willfully misrepresented its temporary need on the 9142B, H-2B Registration, and/or I-129 Petition by misrepresenting number of workers needed and reasons for temporary need in violation of Attestation #12, 20 C.F.R § 655.6, 8 C.F.R. § 214.2(h)(6)(ii)(B), and Part 5, Question 11 of Form I-129.
 - F. The employer substantially failed to comply with the requirement to provide the workers with earnings statements with all the necessary information in violation of Attestation #16 and 29 C.F.R. § 503.16(i).
 - G. The employer substantially failed to comply with the requirement to disclose the job order and/or failed to disclose in a language understood by the workers in violation of Attestation #19 and 29 C.F.R. § 503.16(l).

- H. The employer substantially failed to comply with the requirement to post the notice of worker rights in violation of Attestation #20 and 29 C.F.R. § 503.16(m).
- I. The employer substantially failed to comply with document retention requirements in violation of Attestation #26 and 29 C.F.R. § 503.17.
5. On October 4, 2018, pursuant to 20 C.F.R. § 503.43, Respondent timely requested a hearing before an administrative law judge with regard to the September 6, 2018 Determination Letter.
 6. Subsequently, counsel for Administrator and Respondent conducted settlement discussions and have reached an agreement to resolve this matter.
 7. The parties have reached a settlement and agree to the following: Respondent agrees to pay \$12,082.27 in civil money penalties to the Administrator within 30 days of the date that the Administrative Law Judge enters an Order approving these Consent Findings.¹ In addition, Respondent agrees to withdraw its October 4, 2018 request for hearing. Respondent acknowledges that it has a right to a hearing as to the Administrator's investigative findings, and it hereby agrees to waive such rights from this date forward, upon approval of an Order by the Administrative Law Judge, based upon the full and final settlement of this matter.
 8. Respondent agrees to pay \$12,082.27 in civil money penalties to the Administrator within 30 days of the date that the Administrative Law Judge enters an Order approving these Consent Findings online by ACH transfer, credit card, or debit card by going to <https://www.pay.gov/public/form/start/77689032> or www.pay.gov. Payment of the civil money penalty may also be made by certified check, cashier's check or money order payable to "Wage and Hour Division - U. S. Department of Labor" and must be mailed or delivered to this address:

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

The check or money order shall bear the following reference: Case ID #1745086. Should Respondent fail to make the agreed payment within ten (10) days of the date scheduled, the entire amount shall be due, together with such additional collection and court costs as may be incurred by the Administrator in pursuing collection. Respondent acknowledges that it has a right to a hearing as to the Administrator's investigative findings, and it hereby agrees to waive such rights from this date forward, upon approval of an Order by the Administrative Law Judge, based upon the full and final settlement of this matter.

9. The parties agree that all matters addressed in the September 6, 2018 Determination Letter have been fully and finally resolved by these Consent Findings. The parties further agree that

¹ Respondent has already paid the back wage assessment amount of \$1,760.38 to seven H-2B employees.

Respondent's timely payment of \$12,082.27 in civil money penalties and prior payment of \$1,760.38 in back wages constitutes full satisfaction of all civil monetary penalties and back wages assessed in this matter.

10. Respondent affirms that as of the date of its execution of these Findings, it is complying with all provisions of the INA, the regulations promulgated under the INA at 20 C.F.R. § 655, *et seq.*, and other applicable regulations and federal wage standards. Respondent further stipulates and agrees to remain in full compliance with all applicable provisions of the INA, the regulations promulgated under the INA at 20 C.F.R. § 655, *et seq.*, and other applicable regulations and federal wage standards and will continue to comply therewith in the future.
11. The parties agree that these Consent Findings are deemed to cover the relevant investigative period from August 1, 2014 through July 31, 2016. The parties agree that these Consent Findings do not affect the rights of any of Respondent's employees and H-2B workers receiving payment of back wages outside the scope of the INA and the regulations promulgated under the INA at 20 C.F.R. § 655, *et seq.*, and other applicable regulations.
12. The Administrator does not waive its right to conduct future investigations under the INA, or any other federal statute it has authority to enforce, and to take appropriate action with respect to any violations disclosed by such future investigation, including seeking debarment as a relief
13. The Administrator and Respondent hereby consent that the above Consent Findings and the 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 Administrator's Determination Letter and the Consent Findings;
 - C. That the Administrator and Respondent waive any right to challenge or contest the validity of the Consent Findings, the Determination Letter and the Order entered into in accordance with this agreement;
 - D. All violations set forth in the Administrator's Determination Letter shall be deemed fully resolved by these Consent Findings;
 - E. That the Administrator and Respondent waive of any further procedural steps before the Administrative Law Judge;
 - F. This Decree shall become final immediately upon approval of the Administrative Law Judge; and
 - G. Respondent shall not solicit or accept from any employee any back wages paid pursuant to these Consent Findings.

NOW, therefore, agreement having been reached by the Administrator and Respondent as to all contested charges set forth in the Determination Letter, the parties further stipulate and agree that each party shall bear its own costs as to this proceeding. Specifically, each party agrees to bear its/his 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.

I have reviewed the foregoing Consent Findings, and I find they are fair and adequate. Accordingly, upon request of the parties, I hereby **APPROVE** and **ADOPT** the Consent Findings, and I **CANCEL** the March 28, 2019, hearing.

SO ORDERED.

LAUREN C. BOUCHER
Administrative Law Judge

Cherry Hill, New Jersey

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).