



Issue Date: 22 November 2019

Case No.: 2020-TNE-00002

In the Matter of

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

Prosecuting Party

v.

BEST HORTICULTURAL SERVICES INC.

d/b/a BES

Employer

DECISION AND ORDER APPROVING CONSENT FINDINGS

The above-captioned matter arises from the request for hearing filed by Best Horticultural Services d/b/a BES (“Respondent”) on the determination of the Administrator of the Wage and Hour Division (“Administrator”) issued by letter dated September 17, 2019. 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 was scheduled for a hearing on November 18, 2019. On November 7, 2019, counsel for the Administrator submitted the parties’ executed Consent Findings, which provide as follows:

1. This action arises under the Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163, codified as amended at 8 U.S.C. § 1101 *et seq.* (“the INA”), as amended by the Immigration Reform and Control Act of 1996, P.L. 99-603, 100 Stat. 3359. Jurisdiction over the hearing in this matter is vested in the U.S. Department of Labor Office of Administrative Law Judges by the INA at §§ 103(a)(6), 214(c) and 20 C.F.R. Part 655, Subpart A and 29 C.F.R. Part 503.

2. On September 17, 2019, the U.S. Department of Labor, Wage and Hour Division issued a Determination Letter alleging violations of the H-2B provisions of the INA, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b) and 1184(c)(14) to Respondent, covering the period of January 1, 2016 through December 31, 2017 and assessing civil money penalties. Specifically, the Determination Letter alleged that Respondent substantially failed to comply with conditions for two Applications for Temporary Certification, ETA Form 9142B with Appendix B, in violation of 29 C.F.R. § 503.16(a)(1); 29 C.F.R. § 503.16(b); 29 C.F.R. § 503.16(c); 29 C.F.R. § 503.16(j)(1)(i)

-(ii);29 C.F.R. § 503.16(j)(2);29 C.F.R. § 503.16(b);9 C.F.R. § 503.16(o); 29 C.F.R. § 503.16(q); 29 C.F.R. § 503.16(v), and 20 C.F.R. § 655.6, 8 C.F.R. § 214.2(h)(6)(ii)(B).

3. On October 7, 2019, Respondent filed a timely request for a hearing with respect to the allegations of violations set forth in the September 17, 2019 Determination Letter.

4. The Administrator hereby amends its September 17, 2019 Determination Letter to allege that Respondent owes a civil money penalty in the total amount of \$85,000.00.

5. Respondent withdraws its exception to the September 17, 2019 Determination Letter and agrees to pay \$85,000.00 in civil money penalties. This payment shall be made in accordance with Paragraph 6 of this Consent Findings Order.

6. On or before December 5, 2019, Respondent shall pay the civil money penalties by electronic payment on the website www.pay.gov, or by cashier or certified check.

A. For electronic payments, go to <https://pay.gov/public/form/start/77734139>, select Continue to Form and complete the required fields.

a. Include the Case No. 1823498.

b. The Date of Assessment is the date of the Order.

B. In the alternative, cashier or certified checks should be made payable to “Wage and Hour Division – Labor” and delivered to the following address:

**U.S. Department of Labor
Wage and Hour Division, Regional Office
The Curtis Center, Suite 850 West
170 South Independence Mall West
Philadelphia PA 19106-3317.**

“Case No. 1823498” shall be written on the face of the check or money order.

7. Respondent hereby agrees to comply fully with the requirements of the H-2B program and applicable regulations.

8. The parties agree that an Order disposing of this proceeding in accordance with these Consent Findings shall have the same force and effect as an order made after a full hearing in accordance with 29 C.F.R. §§ 18.71(b)(1) and 503.49(b)(1).

9. The entire record on which this Order may be based shall consist solely of the Determination Letter, as amended herein, and these Consent Findings and Order, 29 C.F.R. §§ 18.71(b)(2) and 503.49(b)(2).

10. The parties hereby waive any further procedural steps before an Administrative Law Judge of the U.S. Department of Labor regarding this matter, 29 C.F.R. §§ 18.71(b)(3) and 503.49(b)(3).

11. Respondent hereby waives any right to challenge or contest the validity of these Consent Findings and Order entered into in accordance with the agreement, 29 C.F.R. §§ 18.71(b)(4) and 503.49(b)(4).

12. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

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 hereby **CANCEL** the November 18, 2018, hearing.

I **ORDER** the parties to comply with the Consent Findings, as set forth above, I **ORDER** Respondent to comply with paragraph 6 no later than **December 5, 2019**.

SO ORDERED.

THERESA C. TIMLIN
Administrative Law Judge

Cherry Hill, New Jersey