



Issue Date: 30 October 2020

Case No.: 2020-TNE-00021

In the Matter of

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

v.

**PREMIER REALTY SERVICES, LLC
d/b/a VIVID GREEN LAWCARE,**
Respondent.

DECISION AND ORDER APPROVING CONSENT FINDINGS

This above-captioned matter arises from the request for hearing filed by Premier Realty Services, LLC d/b/a Vivid Green Lawncare (“Respondent”) on the determination of the Administrator of the Wage and Hour Division (“Administrator”) issued by letter dated January 14, 2020. 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.

On October 30, 2020, counsel for the Administrator submitted the parties’ executed Consent Findings, which provide as follows:

1. This action arises under the Immigration and Nationality Act (“INA” or “Act”), as amended, 8 U.S.C. § 1101(a)(15)(H)(ii)(b), and the regulations promulgated thereunder at 20 C.F.R. Part 655 and 29 C.F.R. Part 503.
2. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by § 214 of the Act, 8 U.S.C. § 1184, and the applicable regulations.
3. 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. § 1101(a)(15)(H)(ii)(b), and the applicable regulations.

4. Respondent filed an H-2B Application for Temporary Employment Certification (“TEC”) (Form ETA 9142B and Appendix B) H-400-16355-778933 that covered the period of April 1, 2017 through November 30, 2017.
5. Respondent also filed TEC H-400-17363-107848 that covered the period from April 1, 2018 through December 31, 2018.
6. On January 14, 2020, the Administrator issued the Determination Letter to Respondent, which detailed the findings from its investigation with regard to the TECs referenced in Paragraphs 4 and 5 above. A Summary of Violations was attached to the Determination Letter. The Summary of Violations stated that the investigation by Wage and Hour determined that the following violations of the H-2B provisions of the INA occurred:
 - i. Respondent substantially failed to comply with the prohibition against placing workers in an unapproved job classification;
 - ii. Respondent substantially failed to comply with the requirement to pay the inbound transportation and subsistence costs;
 - iii. Respondent substantially failed to comply with the requirement to pay Visa fees and costs; and
 - iv. Respondent substantially failed to comply with document retention requirements.
7. As a result of the violations addressed in the Determination Letter, the Administrator determined Respondent owed \$10,819.56 in back wages. The Administrator also assessed civil money penalties totaling \$22,245.56. As of the date of these Consent Findings, Respondent has paid the back wages but has not paid any of the civil money penalties assessed by the Administrator.
8. On February 10, 2020, pursuant to 29 C.F.R. § 503.43, Respondent timely requested a hearing before an administrative law judge with regard to the Determination Letter.
9. Subsequently, counsel for the Administrator and counsel for Respondent conducted settlement discussions and have reached an agreement to resolve this matter.
10. Respondent agrees to pay the total amount of \$13,347.04 in civil money penalties to the Administrator within 90 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](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:

United States Department of Labor Wage and Hour Division

Attn: Williams E. Schweizer

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 #1859319. Should Respondent fail to make the agreed payment within ten (10) days of the date scheduled, the entire amount shall immediately become due and payable, together with such additional collection and court costs as may be incurred by the Administrator in pursuing collection.

11. The parties agree that all matters addressed in the Determination Letter have been fully and finally resolved by these Consent Findings. The parties further agree that Respondent's timely payment of \$13,347.04 in civil money penalties constitutes full satisfaction of all back wages owed, and civil monetary penalties assessed, in this matter.

12. Nothing in these Consent Findings shall be deemed an admission by Respondent to any of the allegations contained in the Determination Letter.

13. 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.

14. The parties agree that these Consent Findings are deemed to cover the relevant investigative period from January 1, 2016 through December 2, 2018. The parties agree that these Consent Findings shall not, in any way, affect, determine, or prejudice any and all rights of any persons, be they current or former employees, not specifically named, insofar as such rights are conferred and reserved to said employees. Further, the parties agree that these Consent Findings do not affect the rights of any of Respondent's employees or 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.

15. 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.

16. The Administrator and Respondent hereby consent that the above Consent Findings and the Order disposing of this proceeding shall have the following effect:

- i. 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;
- ii. That the entire record on which any Order may be based shall consist solely of the Administrator's Determination Letter and the Consent Findings;
- iii. 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;
- iv. All violations set forth in the Administrator's Determination Letter shall be deemed fully resolved by these Consent Findings;
- v. That the Administrator and Respondent waive of any further procedural steps before the Administrative Law Judge; and
- vi. This Decree shall become final immediately upon approval of the Administrative Law Judge.

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.

I **ORDER** the parties to comply with the Consent Findings, as set forth above.

SO ORDERED.

SCOTT R. MORRIS
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).