



DATE: June 12, 2000

CASE NO: 1999-LCA-00004

**IN THE MATTER OF:**

ADMINISTRATOR, WAGE AND HOUR  
DIVISION, Employment Standards Administration  
U. S. Department of Labor

Prosecuting Party

v.

STUART A. JACKSON

Respondent

Appearances:

Marc G. Sheris, Esquire  
For Prosecuting Party

Stuart A. Jackson, Esquire, Pro se  
For Respondent

BEFORE: RALPH A. ROMANO  
Administrative Law Judge

**DECISION AND ORDER**

This is a proceeding under 20 C.F.R. 655.835 to enforce the collection of underpaid back wages due from an H-1B employer to an H-1B nonimmigrant.

The matter was tried on February 8, 2000 in New York, New York, and briefs filed by May 18, 2000.

FINDINGS OF FACT  
CONCLUSIONS OF LAW

THE GOVERNMENT'S CONTENTION

Prosecuting Party (hereinafter "Government") seeks affirmation of its determination that Respondent underpaid an alien worker<sup>1</sup> wages in the amount of \$13,001.78, derived from the alleged failure of Respondent to pay the "required wage" under 20 C.F.R. 655.731.<sup>2</sup>

That Respondent paid the alien \$500.00 per week and that the prevailing wage was determined to be \$860.00 per week, is unrefuted. The Government argues that Respondent's insistence that he is not responsible for the alleged underpayment of wages because he never knowingly agreed to pay the prevailing wage, is neither believable nor of any legal significance. Respondent, who has been a practicing attorney for 40 years, is said not to be believed because it is unreasonable to conclude (as claimed) that a person with such experience would fail to read a document before he signs it. Moreover, because Mr. Jackson first raised this claim only after the investigation was completed (in his request for hearing of May 11, 1999), his credibility is urged to be further diminished. Finally, the allegedly unread document's relatively abbreviated size, is said to militate against crediting the claim. The claim, even if believed, is considered useless in so far as legally absolving Mr. Jackson of responsibility, on the ground that such failure to read before signing amounts to gross negligence, barring a claim that the alien defrauded him.<sup>3</sup>

RESPONDENT'S CONTENTION

Mr. Jackson contends that throughout his relationship with Mr. Pastori, he never intended to pay him more than \$500.00 per week (the amount he thought the services were worth), and that the subject document declaring that he would pay Mr. Pastori the prevailing wage (P-2), was signed by him (if at all) only by "slight of hand" inclusion thereof by Mr. Pastori for his signature among a stack of documents routinely destined for his signature. Accordingly, absent Mr. Jackson's knowing agreement to pay the prevailing wage, Mr. Pastori failed to provide one of the necessary requirements for H-1B nonimmigrant

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<sup>1</sup> Pier Francesco Pastori, who was granted a visa by the Immigration and Naturalization Service effective September 17, 1996 to August 4, 1997, as an H-1B nonimmigrant.

<sup>2</sup> This wage is the greater of the "actual wage" or the "prevailing wage" as defined at 20 C.F.R. 655.731(a)(1) and (2), respectively.

<sup>3</sup>Mr. Jackson testified that the signature on the subject document is probably his, but that Pastori probably included the document as part of a stack of other documents to be routinely signed obscuring the operative prevailing wage language on the top portion of the document. (Transcript 53, 54; P-2).

work status, rendering the issued work visa (P-1, at H) invalid, and any wage requirement derived therefrom inoperative.

### DISCUSSION

Of critical importance in resolving this matter is the fact of Mr. Jackson's testimony at hearing, which I found (Transcript, at 65, 66, 68), and continue to find, entirely credible. Mr. Pastori did not testify, and his version of events, which suggests that Mr. Jackson knowingly agreed to pay the prevailing wage - P-1, at 2, is not accepted as true. I find that Respondent did not knowingly agree to pay Mr. Pastori the prevailing wage.

The burden of proof here admittedly lies with the Government (Transcript, at 14-15), and that burden clearly includes proof of the existence of valid H-1B nonimmigrant visa status foundational to any obligation to pay the prevailing wage. Admitted into the record is such a visa (P-1, at H), which, as such, is presumptively accepted as valid. However, I find this presumption of validity to have been rebutted by the absence of the knowing agreement of Mr. Jackson to pay the prevailing wage, which knowing agreement is essential to proper and complete application for, and issuance of, a valid H-1B work visa. (Transcript, 20-1; 23-25).

Mr. Jackson's assertion that he never intended, envisioned, considered or would ever consider, paying Mr. Pastori more than \$500.00 per week, is supported by the initial indication (at the wage request form) of intent to pay that amount (P-3).<sup>4</sup> There is no evidence in the record, considering Mr. Jackson's credible testimony to the contrary, that Mr. Jackson was ever aware of any obligation on his part to pay the determined prevailing wage. The eventual written notification of such wage was apparently faxed to Mr. Jackson (P-3), but it is undisputed that Mr. Pastori, and not Mr. Jackson, handled, processed, and completed all the paperwork in connection with the visa application (Transcript, at 35). Neither the timing of Mr. Jackson's first revelation of ignorance of the substance of P-2, nor the brevity of the form of P-2, impacts materially upon Mr. Jackson's credibility. That a lawsuit by Mr. Jackson against Mr. Pastori based upon fraud might not succeed is not at issue here, and does not bear negatively upon his credibility, especially in light of the great volume of legal documents routinely signed by him, nowhere disputed here. (Transcript, at 54, 55, 62).<sup>5</sup>

Based upon the record evidence, I find unenforceable the Government's subject determination of failure to pay back wages in violation of 20 C.F.R. 655.805(a)(6), since issued regarding an individual

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<sup>4</sup> "I would never have signed to pay Mr. Pastori \$43,000 a year" (Transcript, at 56). Also, Mr. Jackson never denied to Investigator Dodds that he intended to pay Mr. Pastori \$500.00 per week (Transcript, at 34).

<sup>5</sup> Although such "blind" bulk signing is oddly inconsistent with his suspicion that Mr. Pastori was delusional and unbalanced (Transcript, at 55, 57, 59).

(Pastori) to whom an invalid (and/or mistakenly granted) H-1B visa was issued, with respect to which invalidity the Government has failed in its burden of proof to establish otherwise.

ORDER

The determination of the Prosecuting Party is REVERSED.

RALPH A. ROMANO  
Administrative Law Judge

DATED: June 12, 2000  
Camden, New Jersey