



Issue Date: 30 October 2013

Case No.: 2013-LCA-00008

In the Matter of:

**ARMANDO P. BLANCAFLOR, GIOVANNI
S. CARMAN, IMMANUEL R. CLEOFÉ,
REVINAL S. DELA ROSA, ANGEL A.
DINGLASAN, JR., AARON JAMES C.
EDERANGO, IAN JONATHAN P. GONZALES
LOUIE M. LACTAOEN, LAURO M. LAMPANO,
JR. MELANY D. PANGANIBAN, ARTURO B.
REBADAVIA, JR., SHERWIN A. SINGZON,
ARTURO EDWIN A. TORRES, JR., MANUEL
HERNANDEZ, APOLLO LACUNA, MICHAEL
ANGELO MANUEL, RONALD FELIPE, JONAR
MADRIAGA, PAULO ANTONIO BERMUNDO,
ROEL ISIDRO and ELFERRY PABALAN**

Prosecuting Party

v.

**RUDELL & ASSOCIATES, INC. and
RODOLFO QUIAMBAO, PRESIDENT**

Respondents

ORDER DISMISSING COMPLAINANTS' HEARING REQUEST

The above-captioned matter arises under the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(n) (2005) (the "Act"), and the regulations promulgated thereunder at 20 C.F.R. Part 655, Subparts H and I, C.F.R. § 655.700 et seq.

By letter dated January 29, 2013, the Complainants, through their designated representative, attorney Felix Q. Vinluan, timely requested a hearing to seek review of a determination the Administrator of the Employment Standards Administration, Wage and Hour Division, made on January 15, 2013. That determination upheld a portion of their claims that Rudell & Associates, Inc. and Rodolfo Quiambao, President of Rudell & Associates, Inc., as an individual, failed to pay all their wages due in violation of the H-1B provisions of the Act, Pub. L. 82-414, 66 Stat. 163, *codified and amended at* 8 U. S.C. § 1101(a)(15)(H)(i)(B), including the amendments made in the American Competitiveness and Workforce Improvement Act of 1998, Title V of Pub. L. 105-277, 112 Stat. 2681 (Oct. 21, 1998). The Administrator's determination

noted a back wages obligation on the part of Rudell & Associates and Rodolfo Quiambo in the amount of \$295,540.97 to 50 H-1B nonimmigrants, including the above-named Complainants.

In their hearing request, the Complainants claimed that Respondents, Rudell & Associates and Rodolfo Quiambo (1) owed them a greater amount in wages than the Administrator determined, (2) failed to pay immigration and other fees which were improperly deducted from their wages, and (3) owed them interest on the back pay to be awarded.¹

The Office of Administrative Law Judges (“OALJ”) hears claims of this type on behalf of the Secretary of Labor under § 212(n)(2)(B) of the Immigration Act. *See* 8 U.S.C. §1182(n)(2)(B), implemented in 20 C.F.R. §§ 655.820-840. The procedural rules found in 29 C.F.R. Part 18 apply to these hearings. 20 C.F.R. §655.825. This matter was referred to the OALJ on January 28, 2013 and assigned to me on February 6, 2013.

I issued a Notice of Hearing And Pre-Hearing Order on February 19, 2013, scheduling the matter for hearing on June 19, 2013 in the United States Department of Labor, 201 Varick Street, Room 905A, New York, NY. Pursuant to the parties’ joint request, the hearing was rescheduled to July 30, 2013 by my Order dated March 11, 2013. Subsequently, the Administrator and Respondents reached a settlement agreement and I issued a Decision And Order approving that settlement and dismissing the Administrator from this case on July 24, 2013. The Complainants were substituted as prosecuting parties and on July 17, 2013, I ordered the hearing be rescheduled for September 23, 2013 to allow for further discovery and settlement discussion between the remaining litigants.

The original Notice Of Hearing And Pre-Hearing Order dated February 19, 2013 and the later Notice Rescheduling Hearing And Pre-Hearing Order dated March 11, 2013 advised the parties that failure to comply with its provisions could result in the imposition of sanctions and cited 29 C.F.R. §§ 18.6(d)(2) and 18.29. The subsequent order I issued rescheduling the hearing date finally for September 23, 2013 provided that all the directives outlined in the March 11, 2013 Notice and Order remained in effect.

Neither the Complainants nor their counsel of record appeared at the time and location set for the hearing on September 23, 2013. Complainants’ counsel was aware of the hearing: he made the pre-hearing filings the March 11, 2013 Notice And Order required, and he has never denied having notice of the hearing date. The Respondent, Rodolfo Quiambo, as well as the representatives of the Respondents, appeared for the hearing on September 23, 2013. *See* Hearing Transcript at 6.

I issued an Order To Show Cause dated September 25, 2013, directing the Complainants, through their representative of record, to show cause as to why this matter should not be dismissed due to their failure to appear for the scheduled hearing. The Order To Show Cause directed a response no later than 10 days after its mailing. I incorporate the procedural history outlined in the September 25, 2013 Order To Show Clause by reference herein.

¹ It should be noted that Respondents, Rudell & Associates, Inc. and Rodolfo Quiambo, also requested a hearing seeking review of the Administrator’s determination.

Complainants' counsel never contacted the OALJ on or before September 23, 2013 to seek a postponement, or to say that he would not appear for the hearing. He made no effort to account for his absence and, to date, has not responded to the September 25, 2013 Order To Show Cause.

Because there has been no good cause shown for Complainants' failure to attend the scheduled hearing, I find that Complainants have abandoned their request for hearing. *See* 29 C.F.R. § 18.39(b). Accordingly, the Administrator's determination dated January 15, 2013 will become the final and unappealable order of the Secretary of Labor.

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey