



Issue Date: 08 August 2019

Case No.: 2015-TAE-00002

In the Matter of:

FLAMM ORCHARDS, INC.,
Respondent.

DECISION AND ORDER APPROVING CONSENT FINDINGS

This proceeding arises under the H-2A provisions of the Immigration and Nationality Act (“INA”), as amended by the Immigration Reform and Control Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a), and the implementing regulations found at 20 C.F.R. Part 655 and 29 C.F.R. Parts 501 and 502. On August 18, 2014, a representative of the Administrator, Wage and Hour Division, U.S. Department of Labor, issued a Determination Letter (the “Determination”) to Respondent detailing its findings resulting from an investigation into Respondent’s petitioning for and employing H-2A workers and other workers during the periods from February 20, 2010, to October 13, 2010; February 15, 2011, to October 13, 2011; and February 15, 2012, to October 13, 2012. On September 12, 2014, Respondent filed with the Office of Administrative Law Judges (“OALJ”) a Request for Hearing contesting these findings.

On August 5, 2019, the parties submitted their Settlement Agreement and Consent Findings, in which they agree to resolve this matter. In the Settlement Agreement and Consent Findings: (1) the Administrator amends the Determination to allege that Respondent owes back wages in the total amount of \$45,235.68; (2) Respondent withdraws its exception to the Determination, as amended, regarding alleged back wages owed, states that it has paid back wages in the amount of \$43,296.48 (less applicable withholdings) to the Department of Labor, and agrees to pay back wages in the amount of \$1,939.20 (less applicable withholdings) to Kristopher Pirmann within 30 days of the execution date of the Settlement Agreement; (3) the parties agree that the Determination shall be amended to affirm Violation Nos. 1-3, 7-9, and 14, the civil money penalties for those violations are amended to \$15,100.00, and Violation Nos. 4-6 and 10-13 are withdrawn from the Determination; (4) the parties agree that this tribunal shall affirm the violations set forth in the Determination, as amended; (5) Respondent withdraws its exception to the Determination, as amended, regarding alleged civil money penalties owed and agrees to pay the Administrator \$15,100.00 for the amended civil money penalties within six months of the execution date of the Settlement Agreement; (6) Respondent agrees to comply with the provisions of the INA and all applicable regulations in the future with respect to employing H-2A workers; (7) Respondent agrees to retain an independent third-party monitor to

verify its compliance with applicable requirements, as specified in paragraph 13 of the Settlement Agreement and Consent Findings; and (8) the parties agree that each party shall bear its own costs, attorney's fees, and other expenses incurred in connection with this proceeding. Settlement Agreement and Consent Findings, at 2-5.

Additionally: (1) this Decision and Order shall have the same force and effect as an order made after a full hearing; (2) the entire record on which this Decision and Order is based consists solely of the Determination, as amended, and the parties' Settlement Agreement and Consent Findings; (3) the parties waive any further procedural steps before me; and (4) the parties waive the right to challenge the validity of the Settlement Agreement and Consent Findings and this Decision and Order, which is entered in accordance with the Settlement Agreement and Consent Findings. *See* Settlement Agreement and Consent Findings, at 1-2, 5.

I am satisfied that the Settlement Agreement and Consent Findings conforms to the requirements set forth in 29 C.F.R. § 501.40 and is a satisfactory resolution of the issues previously contested. Accordingly, the terms of the Settlement Agreement and Consent Findings are **APPROVED** and are incorporated by reference into this Decision and Order. This matter, OALJ Case No. 2015-TAE-00002, is **DISMISSED WITH PREJUDICE**.

SO ORDERED.

PAUL R. ALMANZA
Associate Chief Administrative Law Judge