



**Issue Date: 28 February 2017**

*In the Matter of*  
**ADMINISTRATOR WAGE AND HOUR DIVISION  
DEPARTMENT OF LABOR  
Prosecuting Party**

vs.

**BALCA Case No. 2017 TAE 00002**

**RUBEN J. RUIZ, H2A LABOR CONTRACTOR AND  
DE SOTO HARVESTING INC.**  
*Respondents*

**DECISION AND ORDER  
*HEARING CANCELLED*  
AND  
APPROVAL OF CONSENT FINDINGS**

This Immigration and Nationality Act (INA) H2A case was scheduled for hearing in Tampa, Florida, for March 27, 2017. An employer may not file a petition for an H-2A visa with DHS, unless it has first obtained certification from the Secretary of Labor that:

- (A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and
- (B) the employment of a foreign worker in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

8 U.S.C. § 1188(a)(1). The Secretary of Labor may take certain actions to assure that employers comply with the terms and conditions of the H-2A program, such as imposing appropriate penalties and seeking injunctive relief and specific performance of contractual obligations. 8 U.S.C. 1188(g)(2).

On February 28, 2017, the parties submitted proposed consent findings:

1. This action arises under the Immigration and Naturalization Act, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c), and 1188 (the "Act"), and the implementing regulations set forth at 20 C.F.R. Part 655 and 29 C.F.R. Part 501. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by INA Section 212(n)(2), 29 C.F.R. Part 501.

2. The issues resolved by these Consent Findings and Order were identified during investigations conducted by the Wage and Hour Division.

3. On July 15, 2015 and November 4, 2013, the Administrator issued to Respondents Determination Letters identifying alleged violations of the H-2A provisions of the INA.

4. Within the time period provided by 20 C.F.R. § 655.820, Respondents filed Requests for Hearing with respect to the allegations of violations set forth in each of the Determination Letters.

#### GENERAL PROVISIONS

5. These Consent Findings and Order disposing of this proceeding shall have the same force and effect as an Order made after a full hearing.

6. The entire record forming the basis on which the Order is entered shall consist of the July 15, 2015 and November 4, 2013 Determination Letters and attachments, as amended herein, and these agreements and consents.

7. The parties to these Consent Findings and Order hereby waive all further procedural steps between themselves before the Administrative Law Judge.

8. The parties waive any right to challenge or contest the validity of these Consent Findings and Order.

9. All violations alleged in the Determination Letter issued by the Administrator, as amended herein, are and shall be deemed fully resolved by these Consent Findings and Order with regard to both the Complainant and Respondents.

10. These Consent Findings and Order shall become final immediately upon approval of the Administrative Law Judge. The effective date of these Consent Findings and Order shall be the date of approval by the Administrative Law Judge.

#### SPECIFIC PROVISIONS

11. Respondents withdraw the aforesaid exceptions to the administrative determinations.

12. Respondents withdraw their Requests for Hearing filed in these matters.

13. Respondents represent that DeSoto Harvesting, Inc., is no longer a going concern and lacks the assets to immediately satisfy the amounts of back wages and civil money penalties owed. Upon receipt of certain financial information from Respondents, as communicated to Respondents under separate cover, the Administrator, in his sole discretion, will consider an appropriate plan for payment of the amounts owed. Failure of Respondents to abide by the terms of repayment plan, or Respondents refusal to accept the terms of such a payment plan, will result in the full amount of back wages and civil money penalties to become immediately due and owing.

#### REPORTING AND ENFORCEMENT

14. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order, is retained by the Office of Administrative Law Judges.

15. Enforcement proceedings for violation of these Consent Findings and Order may be initiated at any time upon the filing with the Administrative Law Judge a motion for an Order of enforcement and sanctions.

16. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding, including but not limited to attorney's fees, which may be available under the Equal Access to Justice Act, as amended.

17. These Consent Findings and Order shall constitute the final Administrative Order in this case.

After having been fully advised in this matter, pursuant to 29 C.F.R. § 501.40 and 8 U.S.C. 1188(g)(2), I find that the terms fall within my authority and the respondent entered into the agreement freely and without duress.

1. The hearing March 27, 2017 is **CANCELLED**.
2. The consent findings are **APPROVED**.

SO ORDERED

**DANIEL F. SOLOMON**  
**ADMINISTRATIVE LAW JUDGE**

**NOTICE OF APPEAL RIGHTS:** Any party seeking review of this decision, including judicial review, shall file a Petition for Review (“Petition”) with the Administrative Review Board (“ARB”) within 30 days of the date of this decision. 29 C.F.R. § 501.42. 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](mailto:Boards-EFSR-Help@dol.gov)

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. If you e-File your petition, only one copy need be uploaded.

Copies of the Petition should be served on all parties and on the undersigned Administrative Law Judge. If the ARB does not receive the Petition within 30 days of the date of this decision, or if the ARB does not issue a notice accepting a timely filed Petition within 30 days of its receipt of the Petition, this decision shall be deemed the final agency action. 29 C.F.R. §501.42(a).