



**Issue Date: 10 January 2018**

CASE NO.: 2017-TAE-00008

*In the Matter of:*

BARTOLO HERNANDEZ,  
*Respondent.*

**ORDER ON CONSENT FINDINGS**

A hearing in this matter was scheduled for January 10, 2018 in Savannah, Georgia, after having been continued from September 4, 2017. On December 26, 2017, the Administrator filed a motion for summary decision. Because Respondent's opposition was due on January 9, 2018, the day before the hearing, the hearing was canceled by order dated January 2, 2018, to provide enough time to consider the motion and opposition.

Shortly thereafter, counsel for the Administrator advised that the parties had agreed on consent findings, and the consent findings were filed on January 8, 2018. Upon review, the consent findings are approved. Accordingly, IT IS HEREBY ORDERED:

1. This action arises under the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1101, *et seq.*, and Regulations found at 29 C.F.R. Part 501 for final administrative determination of violations, computation of back wages, and assessment of civil money penalties under the Act. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by 29 C.F.R. § 501.37.
2. The issues resolved by these Consent Findings and Order were identified initially during an investigation conducted by the Wage and Hour Division ("WHD") covering the period of April 15, 2013 to November 30, 2013.
3. On May 15, 2014, the WHD Administrator issued a Determination Letter to Respondent notifying Respondent of WHD's findings, computed back wages, and assessed civil money penalties (CMPs).
4. Respondent filed a timely request for hearing with respect to the assessment of CMPs set forth in the May 15, 2014 Determination Letter.
5. Respondent has failed to pay any of the back wages or assessed CMPs outlined in the May 15, 2014 Determination Letter. Respondent represented that it lacked the assets to satisfy immediately the amount of back wages and civil money penalties owed and requested a payment plan.
6. The parties have conferred and have executed these Consent Findings and Order to resolve the outstanding back wages and assessment of the CMPs as of January 2, 2018. The Administrator has verified that Respondent does suffer from financial hardship. In consideration, Respondent agrees to pay the outstanding \$99,508.65 in

H-2A back wages and the Administrator conditionally amends the May 15, 2014 Determination Letter to allege that Respondent owes \$5,000.00 in CMPs as long as Respondent adheres to the payment terms and conditions set forth in Paragraphs 7 through 9 below.

7. Respondent agrees to pay the outstanding H-2A back wages, as outlined below, commencing February 1, 2018. The Respondent will submit the monthly payments for H-2A back wages to the Administrator by certified check via U.S. mail to: U.S. Department of Labor – Wage Hour Division, c/o Mathurita Lolly Lovett, 450 Mall Blvd., Ste. D, Savannah, GA 31406, in accordance with the following schedule (each monthly payment includes an amount representing interest due):

<b>Payment No.</b>	<b>Amount</b>	<b>Due Date</b>
1	\$3,359.97	February 1, 2018
2	\$3,359.97	March 1, 2018
3	\$3,359.97	April 1, 2018
4	\$3,359.97	May 1, 2018
5	\$3,359.97	June 1, 2018
6	\$3,359.97	July 1, 2018
7	\$3,359.97	August 1, 2018
8	\$3,359.97	September 1, 2018
9	\$3,359.97	October 1, 2018
10	\$3,359.97	November 1, 2018
11	\$3,359.97	December 1, 2018
12	\$3,359.97	January 1, 2019
13	\$3,359.97	February 1, 2019
14	\$3,359.97	March 1, 2019
15	\$3,359.97	April 1, 2019
16	\$3,359.97	May 1, 2019
17	\$3,359.97	June 1, 2019
18	\$3,359.97	July 1, 2019
19	\$3,359.97	August 1, 2019
20	\$3,359.97	September 1, 2019
21	\$3,359.97	October 1, 2019
22	\$3,359.97	November 1, 2019
23 <sup>1</sup>	\$3,359.97	December 1, 2019
24	\$3,359.97	January 1, 2020
25	\$3,359.97	February 1, 2020
26	\$3,359.97	March 1, 2020
27	\$3,359.97	April 1, 2020
28	\$3,359.97	May 1, 2020

<sup>1</sup> This payment is missing from the schedule shown on the parties' proposed Consent Findings. I conclude that it was an oversight, as (1) the total amount shown on that schedule is \$3,359.97 more than the total of the payments shown, and (2) a payment of a CMP installment is scheduled for December 1, 2019, and it is the clear intention of the parties to spread both the back wage payments and the CMP payments over 30 months.

29	\$3,359.97	June 1, 2020
30	\$3,360.00	July 1, 2020

8. The circumstances in these proceedings are of a nature warranting debarment under applicable and Regulations pursuant to 20 C.F.R. § 655.73. Respondent will be debarred and prohibited from participating in the H-2A program for a period of three (3) years.
9. On the condition of Respondent's debarment, the Administrator agrees to amend the May 15, 2014 Determination Letter to assess \$5,000.00 in CMPs. Respondent agrees to pay the \$5,000.00 in CMPs in monthly installments, as outlined below, over a 30-month period beginning on February 1, 2018. Respondent shall make payment by certified check for each CMP payment via U.S. Mail to: U.S. Department of Labor, c/o Gary Pack, 61 Forsyth Street, SW, Room 7M80, Atlanta, GA 30303, in accordance with the following schedule (each monthly payment includes an amount representing interest due):

<b>Payment No.</b>	<b>Amount</b>	<b>Due Date</b>
1	\$168.83	February 1, 2018
2	\$168.83	March 1, 2018
3	\$168.83	April 1, 2018
4	\$168.83	May 1, 2018
5	\$168.83	June 1, 2018
6	\$168.83	July 1, 2018
7	\$168.83	August 1, 2018
8	\$168.83	September 1, 2018
9	\$168.83	October 1, 2018
10	\$168.83	November 1, 2018
11	\$168.83	December 1, 2018
12	\$168.83	January 1, 2019
13	\$168.83	February 1, 2019
14	\$168.83	March 1, 2019
15	\$168.83	April 1, 2019
16	\$168.83	May 1, 2019
17	\$168.83	June 1, 2019
18	\$168.83	July 1, 2019
19	\$168.83	August 1, 2019
20	\$168.83	September 1, 2019
21	\$168.83	October 1, 2019
22	\$168.83	November 1, 2019
23	\$168.83	December 1, 2019
24	\$168.83	January 1, 2020
25	\$168.83	February 1, 2020
26	\$168.83	March 1, 2020
27	\$168.83	April 1, 2020

28	\$168.83	May 1, 2020
29	\$168.83	June 1, 2020
30	\$168.77	July 1, 2020

10. If Respondent fails to provide payment for the outstanding back wages and CMPs to the Administrator as outlined in Paragraphs 6-9, then the Administrator will void the amendment of CMPs referred to in Paragraph 9. The initial amount of CMPs assessed in the May 15, 2014 Determination Letter will be fully reinstated and due immediately, but no later than 60 days from the first day of default, to the Administrator along with the remaining balance of back wages.
11. In the event that any of such monies cannot be so distributed within the period of 3 years from the date of this Order, because of inability to locate the proper persons or because of such persons' refusal to accept them, such amounts shall be deposited into the Treasury of the United States as miscellaneous receipts.
12. In the event that Respondent defaults on the terms and conditions as outlined in Paragraphs 6-9 and the original amount of CMPs assessed is reinstated, Respondent shall submit via U.S. Mail two (2) certified checks – one in the amount of the remaining balance of back wages owed and one for the remaining balance of the original amount of CMPs as initially assessed in the May 15, 2014 Determination Letter – to the Administrator at the following address: Southeast Regional Office, U.S. Department of Labor – Wage and Hour, c/o Gary Pack, 61 Forsyth Street, SW, Room 7M80, Atlanta, GA 30303.
13. The dollar amounts reflected in this Order constitute a debt owed to the Federal government and therefore are subject to the assessment of interest, administrative cost charges, and penalties in accordance with the Debt Collection Act of 1982 and Departmental policies. Additional interest will be assessed at the current U.S. Department of Treasury Tax and Loan Account rate on any payment not received by the due date, as outlined in paragraphs 7 and 9, accruing daily from the first day of default. A penalty at the rate of 6% will be assessed daily on any payment not paid within 30 days of the payment's original due date, beginning on the thirty-first day of default.
14. These Consent Findings and Order disposing of this proceeding with respect to the matters referenced herein shall have the same force and effect as an order made after a full hearing.
15. The entire record forming the basis on which the Consent Findings and Order are entered shall consist of the Determination Letter and the provisions and amendments contained herein.
16. The parties waive all further procedural steps between themselves before the administrative law judge with respect to the issues raised herein. The parties waive any right to challenge or contest the validity of these Consent Findings and Order.
17. The violations alleged in the Determination Letter issued by the Administrator and referenced herein are and shall be deemed to be fully resolved by these Consent Findings and Order with regard to all parties. There are no further issues for litigation.
18. 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.

19. Respondent's request to withdraw its Request for Hearing filed in this matter with respect to the findings in the Determination Letter dated May 15, 2014 is GRANTED, and the Administrator's conditional amendment to the Determination Letter, resulting in an amended CMP amount of \$5,000.00, shall become the final and unappealable order of the Secretary pursuant to 29 C.F.R. § 501.33.
20. Notwithstanding Paragraph 19, if Respondent fails to adhere to the terms and conditions of Paragraphs 6-8 of these Consent Findings and Order, then the Administrator's conditional amendment, referred to in Paragraph 8, is void and the original Determination Letter dated May 15, 2014 shall become the final and unappealable order of the Secretary pursuant to 29 C.F.R. § 501.33.
21. Respondent is hereby DEBARRED from the H-2A program, pursuant to 20 C.F.R. § 655.73, for a period of three (3) years.
22. 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 to the extent permitted under the Act and regulations.
23. 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.
24. 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.
25. These Consent Findings and Order shall constitute the final Administrative Order in this case with respect to the issues raised herein.
26. The Administrator's Motion for Summary Decision is DENIED as moot.

**SO ORDERED.**

PAUL C. JOHNSON, JR.  
District Chief Administrative Law Judge

PCJ, Jr./ksw  
Newport News, Virginia