



Issue Date: 23 August 2017

Case No.: 2017-TAE-00012

In the Matter of:

MEJIA PRODUCE, LLC,
Respondent.

**ORDER GRANTING MOTION TO WITHDRAW REQUEST FOR HEARING and
GRANTING MOTION FOR FINAL ORDER**

This matter was docketed in the Office of Administrative Law Judges on June 6, 2017, after Respondent Mejia Produce, LLC requested a hearing on the Administrator's notice alleging violations of the Immigration and Nationality Act and its implementing regulations. A hearing was scheduled for July 28, 2017; it was canceled after the parties filed a joint waiver of expedited hearing.

On July 31, 2017, Respondent filed a Notice of Withdrawal of Request for Hearing. That pleading is construed to be a motion for leave to withdraw. The Administrator, Wage and Hour Division (WHD) did not specifically respond to that pleading, but on August 10, 2017 filed a Motion for Final Order. The Administrator requested that, in light of Respondent's Notice of Withdrawal, an order be issued finding that WHD's written notice of determination dated January 9, 2017 has become the final and unappealable order of the Secretary. Respondent did not file an opposition to the Administrator's motion, and the time for doing so has passed.

The regulation addressing hearing requests provides:

(a) Any person desiring review of a determination referred to in §501.32, including judicial review, shall make a written request for an administrative hearing to the official who issued the determination at the WHD address appearing on the determination notice, no later than 30 days after the date of issuance of the notice referred to in §501.32.

...

(d) The determination shall take effect on the start date identified in the written notice of determination, unless an administrative appeal is properly filed. The timely filing of an administrative appeal stays the determination pending the outcome of the appeal proceedings, provided that any surety bond remains in effect until the conclusion of any such proceedings.

29 C.F.R. § 501.33. The regulation does not address the specific circumstances of this case, where a request for hearing was timely filed. The notice of determination was issued on January 9, 2017, and the hearing request was dated February 8, 2017, the last possible day for filing. It therefore appears that should I grant Respondent's motion, the notice of determination becomes the final order of the Secretary on the day after the order. Accordingly, the Administrator's motion will, for all practical purposes, be granted.

ORDER

In light of the foregoing, IT IS ORDERED:

1. Respondent's motion to withdraw its request for hearing is GRANTED;
2. The Administrator's Motion for Final Order is GRANTED; and
3. The notice of determination dated January 9, 2017 becomes the final and unappealable order of the Secretary pursuant to 29 C.F.R. § 501.33 on the calendar day following the date of this Order.

SO ORDERED.

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

PCJ, Jr./ksw
Newport News, Virginia