



**Issue Date: 12 March 2019**

Case No.: 2018-TAE-00032

In the Matter of:

**DILLER NURSREY, INC.**  
Respondent

**DECISION AND ORDER APPROVING CONSENT FINDINGS**

This matter arises pursuant to the Immigration and Nationality Act (“INA”) Temporary Alien Employment H-2A visa program, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a) and 1188(c), as implemented by regulations at 20 C.F.R. Part 655, subpart B, and 29 C.F.R. Part 501. On December 19, 2017, Diller Nursery Inc. (“Respondent”) requested a hearing regarding the Notice of Determination of Assessing Civil Money Penalties issued by the Administrator of the Wage and Hour Division of the United States Department of Labor (“Administrator”) on November 21, 2017.

This matter is currently scheduled for a hearing on March 21, 2019, in Harrisburg, Pennsylvania. On March 8, 2019, counsel for the Administrator submitted Consent Findings executed by the parties, which provide as follows:

1. This action arises under the H-2A visa program of the Immigration and Nationality Act (“INA” or “the Act”), as amended 8 U.S.C. § 1101(a)(15)(H)(ii)(a) et seq., 1184 (c)(14), and 20 C.F.R. Part 655, subpart A (2008).
2. Jurisdiction over the hearing in this matter is vested in the Office of Administrative Law Judges by § 218 of the Act, 8 U.S.C. § 1188, and the applicable regulations.
3. The issues resolved by these Consent Findings were initially identified during an investigation conducted by the Wage and Hour Division of the United States Department of Labor (“Wage and Hour”) regarding Respondent's compliance with the H-2A provisions of the INA, 8 U.S.C. § 1101(a)(15)(H)(ii)(a), and the applicable regulations..
4. On November 21, 2017, the Administrator issued a Determination Letter to Respondent which detailed the findings from its investigation of the period from September 29, 2015 through September 28, 2017. A Summary of Violations was attached to the Determination Letter. The Summary of Violations stated that the investigation by Wage and Hour determined that the following violations of the H-2A provisions of the INA occurred:

- A. Diller violated 20 C.F.R. § 655.121(a)(3) when it substantially failed to comply with recruitment requirements. Specifically, the job offer failed to list the actual terms and conditions of the work because it did not indicate that H-2A employees were required to participate in deliveries.
  - B. Diller violated 20 C.F.R. § 655.122(j)(1) when it substantially failed to comply with record-keeping requirements that it show the nature and amount of work performed by the H-2A workers. Specifically, Diller failed to keep records that indicated that H-2A employees participated in deliveries.
  - C. Diller violated 20 C.F.R. § 655.122(d)(1)(i) by providing substandard housing to the H-2A employees that did not meet the OSHA requirements as outlined in 20 CFR § 1910.142.
- 5. As a result of the violations addressed in the November 21, 2017 Determination Letter, the Administrator assessed a total of \$2,155.40 in civil monetary penalties. As of the date of these Consent Findings, Respondent has not paid any of the civil money penalties assessed by the Administrator.
  - 6. On December 19, 2017, pursuant to 20 C.F.R. § 501.33, Respondent timely requested a hearing before an administrative law judge with regard to the November 21, 2017 Determination Letter.
  - 7. Subsequently, counsel for the Administrator and counsel for the Respondent conducted settlement discussions and have reached an agreement to resolve this matter.
  - 8. The parties have reached a settlement and agree to the following:
    - i. Respondent agrees to pay \$600 in civil money penalties to the Administrator within 45 days of the date that the Administrative Law Judge enters an Order approving these Consent Findings. In addition, Respondent agrees to withdraw its December 19, 2017 request for a hearing. Respondent acknowledges that it has a right to a hearing as to the Administrator's investigative findings, and it hereby agrees to waive such rights from this date forward, upon approval of an Order by the Administrative Law Judge, based upon the full and final settlement of this matter.
    - ii. Administrator hereby amends the November 21, 2017, Determination Letter by withdrawing the citation for violation of 20 C.F.R. § 655.121(a)(3) failure to comply with recruitment requirements and the citation for violation of 20 C.F.R. § 655.122(j)(1) failure to comply with record-keeping requirements.

9. In exchange for Respondent's agreement to the provisions discussed above, the Administrator hereby releases Respondent, its officers, directors, shareholders, insurers, sureties, and its successors and assigns, from any and all claims of any nature or amount, arising from or relating to the violations described in Paragraph 4 of these Consent Findings.
10. Respondent agrees to pay \$600 in civil money penalties (within 45 days of the date that the Administrative Law Judge enters an Order approving these Consent Findings) online by ACH transfer, credit card, or debit card by going to <https://www.pay.gov/public/form/start/77689032> or [www.pay.gov](http://www.pay.gov). Should Respondent fail to make the agreed payment within ten (10) days of the date scheduled, the entire amount shall immediately become due and payable, together with such additional collection and court costs as may be incurred by the Administrator in pursuing collection.
11. The parties agree that all matters addressed in the Determination Letter have been fully and finally resolved by these Consent Findings. The parties further agree that Respondent's timely payment of \$600 in civil money penalties constitutes full satisfaction of all civil monetary penalties assessed in this matter.
12. Nothing in these Consent Findings shall be deemed an admission by Respondent to any of the allegations contained Paragraph 4 above, or the allegations in the November 21, 2017, Determination Letter.
13. Respondent affirms that as of the date of its execution of these Findings, it is complying with all provisions of the INA, the regulations promulgated under the INA at 20 C.F.R. § 655, et seq., and other applicable regulations and federal wage standards. Respondent further stipulates and agrees to remain in full compliance with all applicable provisions of the INA, the regulations promulgated under the INA at 20 C.F.R. § 655, et seq., and other applicable regulations and federal wage standards and will continue to comply therewith in the future.
14. The parties agree that these Consent Findings are deemed to cover the relevant investigative period from September 29, 2015 through September 28, 2017. The parties agree that these Consent Findings shall not, in any way, affect, determine, or prejudice any persons, be they current or former employees, insofar as such rights are conferred and reserved to said employees. Further, the parties agree that these Consent Findings do not affect the rights of any of Respondent's employees or any H-2A workers receiving payment of back wages outside the scope of the INA and the regulations promulgated under the INA at 20 C.F.R. § 655, et seq., and other applicable regulations.
15. The Administrator does not waive its right to conduct future investigations under the INA, or any other federal statute it has authority to enforce, and to take appropriate action with respect to any violations disclosed by such future investigation, including seeking debarment as a relief.

16. The Administrator and Respondent hereby consent that the above Consent Findings and the Order disposing of this proceeding shall have the following effect:

- A. That the Consent Findings and Order entered into in accordance with this agreement shall have the same force and effect as an Order made after full hearing;
- B. That the entire record on which any Order may be based shall consist solely of the Administrator's Determination Letter, as amended, and the Consent Findings;
- C. That the Administrator and Respondent waive any right to challenge or contest the validity of the Consent Findings, the Determination Letter, as amended, and the Order entered into in accordance with this agreement;
- D. All violations set forth in the Administrator's Determination Letter, as amended, shall be deemed fully resolved by these Consent Findings;
- E. That the Administrator and Respondent waive of any further procedural steps before the Administrative Law Judge; and
- F. This Decree shall become final immediately upon approval of the Administrative Law Judge.

I have reviewed the foregoing Consent Findings, and I find they are fair and adequate. Accordingly, upon request of the parties, and pursuant to 29 C.F.R. § 501.40, I **APPROVE** and **ADOPT** the Consent Findings, and I **CANCEL** the March 21, 2019, hearing. I **ORDER** the parties to comply with the Consent Findings, as set forth above.

**SO ORDERED.**

**LAUREN C. BOUCHER**  
Administrative Law Judge

Cherry Hill, New Jersey