



Issue Date: 14 April 2021

Case No.: 2020TAE00004
OWCP No. 0500-19-00762

In the Matter of:
WAGE AND HOUR DIVISION,
Administrator,

v.

JON FIRST
Respondent,
and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS
Party-In-Interest

DECISION AND ORDER APPROVING CONSENT FINDINGS

This complaint arises under the H-2A provisions of the Immigration and Nationality Act of 1952, as Amended by the Immigration Act of 1990, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, and the American Competitiveness and Workforce Improvement Act of 1998 ("ACWIA")(Title IV of Pub. L. 105-277, Oct. 21, 1998; 112 Stat. 2681) found at 8 U.S.C. §§ 1101, et. seq.; ("INA") and 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a). On April 6, 2021, the Administrator informed the undersigned that this matter had settled, and submitted the executed Settlement Agreement and Consent Findings (Consent Findings) for my review. The contents of the Consent Findings and attached Exhibits A-B, are incorporated by reference as if fully set out herein.

The parties have stipulated and agreed to the following:

[That] pursuant to 29 C.F.R. § 18.9, to the approval of this Settlement Agreement and Consent Findings ("Settlement Agreement") and the entry of a Decision and Order ("Order") based thereon without contest. The parties have agreed to resolve this matter in accordance with the terms and conditions of this Settlement Agreement. Any Order entered herein shall have the same force and effect as an Order made after a full hearing. The entire record on which the Order entered herein is based shall consist solely of the Determination issued by the Administrator, which constitutes the complaint herein, and this Settlement Agreement, pursuant to 29 C.F.R. § 18.9.

The parties hereby waive any further procedural steps before the Administrative Law Judge and the Administrative Review Board, and further waive any right to challenge or contest the validity of the Settlement Agreement and Order entered in accordance with this Agreement with respect to Respondent's liability arising out of these proceedings. All allegations of violations in the Determination to Respondent shall be deemed fully resolved by this Settlement Agreement with regard to the individuals listed in Exhibit A. This Settlement Agreement shall become final and effective immediately upon approval by the Administrative Law Judge. Any Order entered shall be in accordance with the following agreed findings, terms and conditions:

1. These proceedings arise under the INA and 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a). Jurisdiction over these proceedings is vested in the Office of Administrative Law Judges by INA § 212(n), 8 U.S.C. § 1182(n), and 20 CFR Part 655.800 *et seq.* with respect to Respondent's request for a hearing involving alleged violations of the provisions of § 1182(n) of the Act. The Office of Administrative Law Judges shall retain jurisdiction to reinstate these proceedings without prejudice in the event of a breach of this Settlement Agreement.
2. The issues resolved by this Settlement Agreement were identified during an investigation conducted by the Wage and Hour Division with respect to Respondent's petitioning for and employing H-2A workers for the period November 2, 2016 through November 1, 2018.
3. On June 17, 2019, the Administrator's representative issued a Determination to Respondent detailing the Administrator's findings regarding INA violations.
4. On July 19, 2019, within the time period provided by 20 C.F.R. § 655.820, Respondent filed a Request for Hearing contesting the findings contained in the Determination.
5. Respondent agrees to comply with the provisions of the INA and the applicable regulations in the future with respect to Respondent's petitioning for and employment of H-2A workers.
6. The Administrator hereby amends the civil money penalties to \$3,000 for the H-2A violations. (See the attached Exhibit B for a *Summary of Violations and Remedies*).
7. Respondent hereby withdraws its exception to the H-2A assessed civil money penalties, as amended, withdraws its Request for a Hearing, and agrees to pay back wages of \$14,623.95 and civil money penalties in the amount of \$3,000.00, for a total of \$17,623.95.
8. Respondent shall pay the above amounts to the Complainant by submitting a certified check or cashier's check payable to "US Department of Labor - Wage and Hour Div.," along with a signed copy of this agreement. At the time Respondent sends its payment, the Respondent will also send a

schedule listing the name, last known address, social security number, and gross amount of wages due each employee being paid and listed on Exhibit A to the following address: United States Department of Labor, Midwest Regional Office, Wage and Hour Division, P.O. Box 2638, Chicago, Illinois 60690-2638. Respondent remains responsible for paying its share of any applicable taxes to the appropriate State and Federal revenue authorities.

9. The DOL shall distribute the proceeds of the back wage payment (less legal deductions for each employee's share of social security and federal withholding taxes for the back wage amounts) to the persons enumerated in Exhibit A, or to their estates, if that be necessary, and any amounts not so paid within a period of three (3) years from the date of receipt thereof shall be covered into the Treasury of the United States as miscellaneous receipts. The Administrator and Respondent agree the violations referenced in the Administrator's Determination and Summary of Violations and Remedies, as amended, shall be affirmed, by the Court.
10. The Administrator states and Respondent acknowledges and agrees that United States Citizenship and Immigration Services ("USCIS") (formerly the Attorney General) and the Employment and Training Administration, United States Department of Labor ("ETA"), shall not approve petitions filed under section 214(c) of the INA, 8 U.S.C. § 1184(c), for nonimmigrants to be employed by Respondent for a period of 12 months (hereinafter, "the debarment period"). **The debarment period shall commence upon the date a final *Decision and Order* based upon this *Settlement Agreement* is issued and Respondent shall be prohibited from applying for future H-2A Temporary Labor Certifications for Agricultural Workers during the debarment period. Respondent shall also be disqualified from filing any labor certification applications or labor condition applications with the Department of Labor by, or on behalf of, Respondent for the debarment period under 29 C.F.R. § 502.20 and 20 C.F.R. § 655.182(f).** Respondent shall be placed on the H-2A Labor Certification Debarment List for the duration of the debarment period. The Administrator and Respondent acknowledge that any debarment action taken pursuant to 29 C.F.R. § 502.20(e) and 20 C.F.R. § 655.182 will not affect visas that already have been issued or immigration statuses already in existence; however, no extensions will be granted.
11. After the debarment period ends, Respondent agrees to comply with the provisions of the INA and the applicable regulations in the future with respect to Respondent's petitioning for and employing H-2A nonimmigrants.
12. Respondent, its officers, agents, servants, employees, assigns and all persons in active concert or participation with them shall not request, solicit, suggest, or coerce, directly, or indirectly, any employee to return or to offer to return to Respondent or to someone else for Respondent, any money in the form of cash, check, or any other form, for wages previously

- due or to become due in the future to said employee under the provisions of this *Settlement Agreement* or the INA.
13. Respondent, its officers, agents, servants, employees, assigns and all persons in active concert or participation with them shall not accept, or receive from any employee, either directly or indirectly, any money in the form of cash, check, or any other form, for wages heretofore or hereafter paid to said employee under the provisions of this *Settlement Agreement* or the INA.
 14. Respondent, its officers, agents, servants, employees, assigns and all persons in active concert or participation with them shall not intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against, nor solicit or encourage anyone else to discriminate against, any employee because, in whole or in part, such employee has received or retained money due to him from Respondent under the provisions of this *Settlement Agreement* or the INA. It shall be a violation of this *Settlement Agreement* to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to INA section 214(c), 8 U.S.C. § 1184(c), or any regulation promulgated thereunder, has cooperated in any such U.S. Department of Labor ("DOL") investigation, or has testified or is about to testify in any such proceeding.
 15. This Settlement Agreement resolves all issues raised in case no. 2020-TAE-00004 for the period identified in paragraph 2 of this Settlement Agreement. Respondent further agrees to comply with the provisions of the INA and the applicable regulations in the future with respect to Respondent's petitioning for and employing H-2A workers.
 16. Each party agrees to bear its own costs, attorney's fees, and other expenses incurred by each such party in connection with any stage of this proceeding to date with no costs,- including, but not limited to, all costs referenced under the Equal Access to Justice Act, as Amended.

Upon review of the submitted Consent Findings and attached Exhibits A-B, the undersigned finds that they are sufficient, supported and warranted by the evidence submitted and therefore I accept and make these Consent Findings my own determinations in the instant claim.

Accordingly,

IT IS HEREBY ORDERED that the Consent Findings filed on April 6, 2021, are **APPROVED**, and thereby become the final order of the Secretary and may be enforced pursuant to 29 C.F.R. §1982.113.

IT FURTHER ORDERED that the complaint filed in this matter is **DISMISSED**.

PETER B. SILVAIN, JR.
Administrative Law Judge